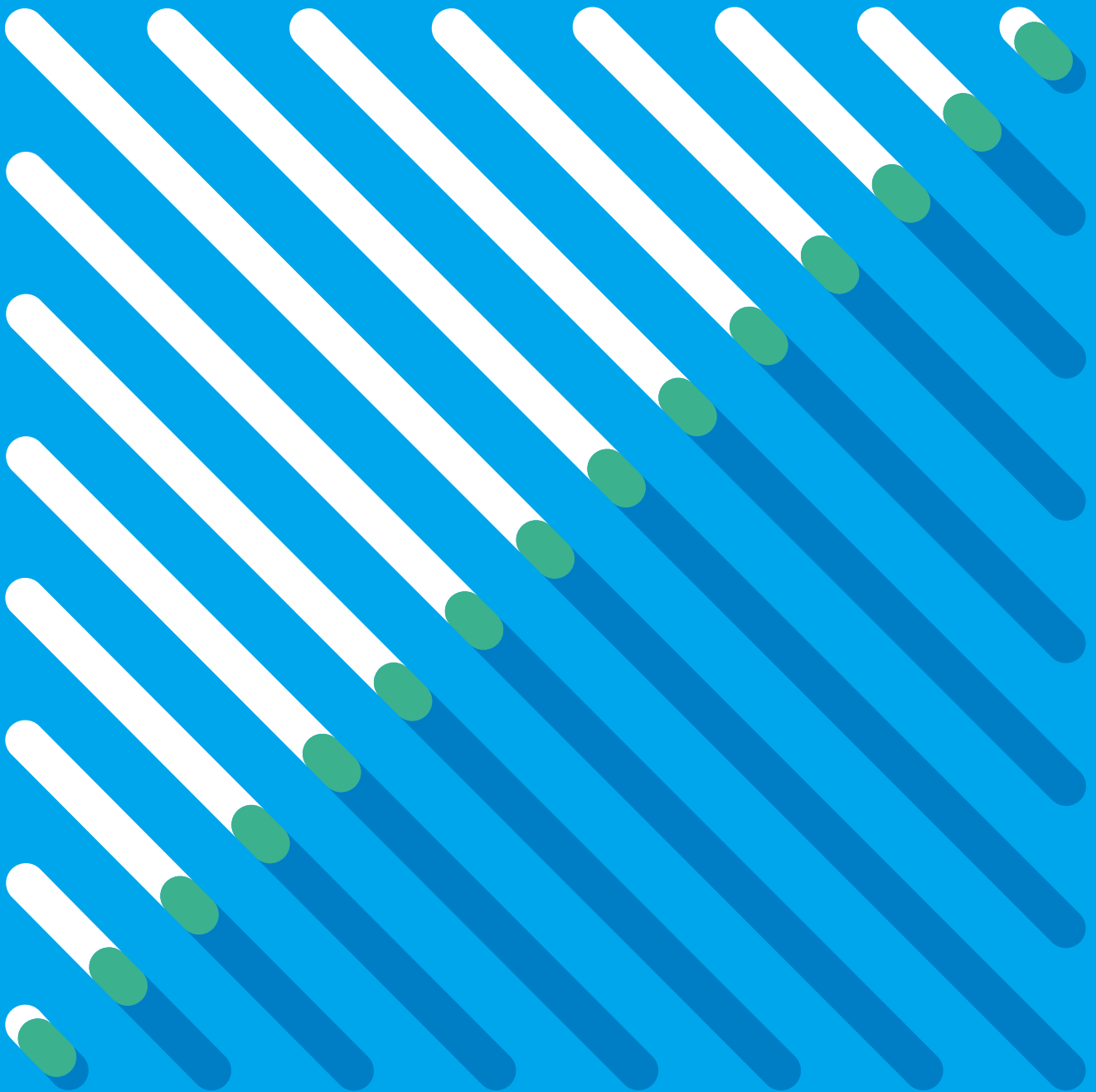
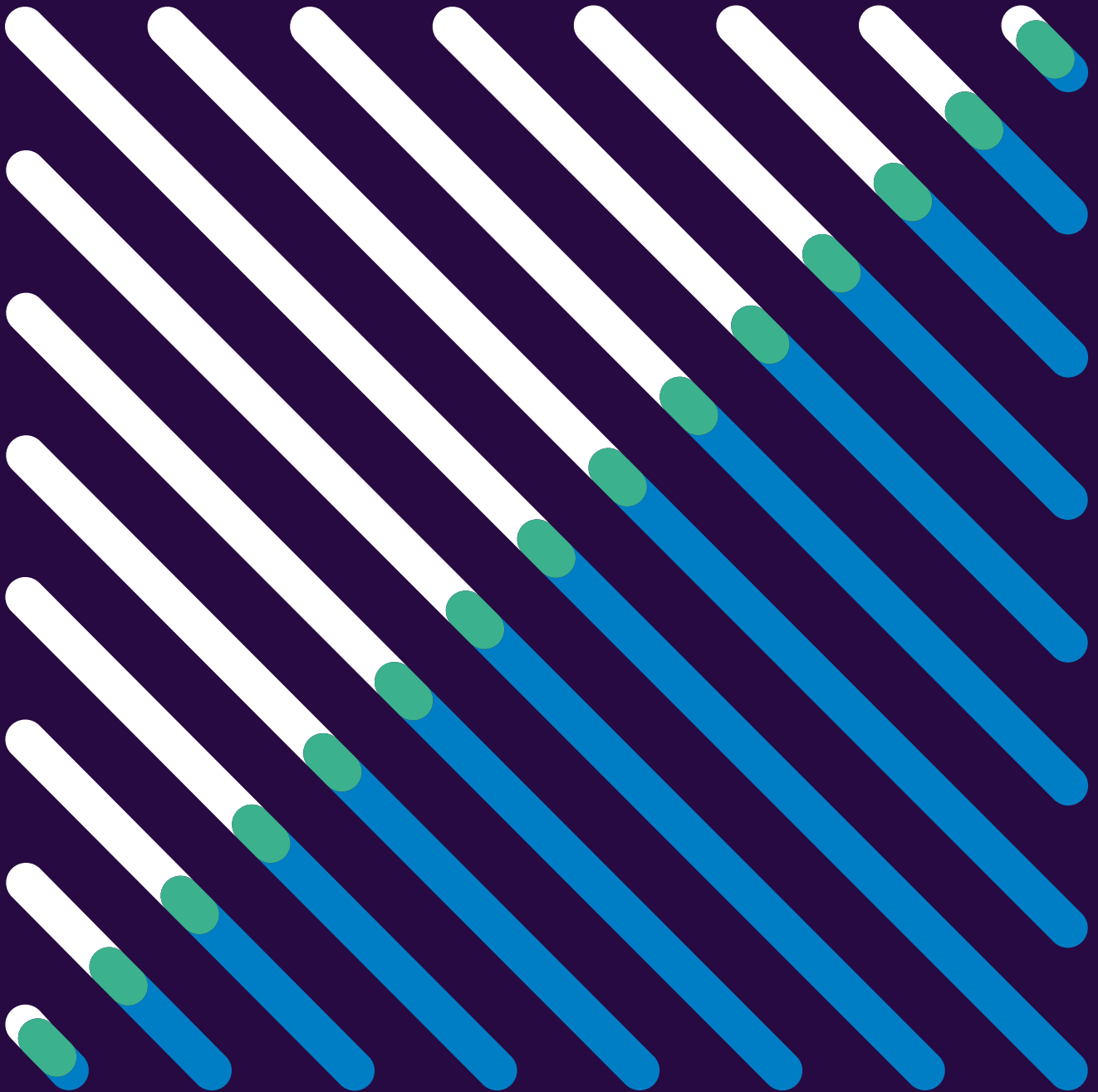


REPORT OF THE REVIEW OF AUSTRALIA'S SPORTS INTEGRITY ARRANGEMENTS



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EXPLANATORY NOTES TO THE REPORT FORMAT

Where the Panel has used direct quotes from submissions in the report these sections are shaded.

The Recommendations are numbered from 1 to 52 in the introductory section of the Report for ease of reference and correlated throughout the text . The Recommendations numbering listed in each relevant chapter summary are listed in order for that chapter.

Review of Australia's Sports Integrity Arrangements.

James Wood AO QC
David Howman CNZM
Ray Murrphy


Senator the Hon. Bridget McKenzie
Minister for Sport
Parliament House
CANBERRA ACT 2600

Dear Minister

We make this report on our Review of Australia's Sport Integrity Arrangements pursuant to the reference given to us by the then Minister for Sport, and announced on 5 August 2017.

Yours faithfully


James Wood


David Howman


Ray Murrphy

EXECUTIVE SUMMARY

The Review of Australia's Sports Integrity Arrangements (Review) was requested as part of the work being done by the Australian Government to develop a National Sport Plan (Plan). The further development of the Plan now falls within the responsibility of the Minister for Sport, Senator the Hon. Bridget McKenzie, to whom this report is delivered.

The increasing commercialisation of sport, the rapid growth in sports wagering, and revelations of ongoing manipulation of sports competitions and doping scandals, has made this Review timely.

The Plan is intended to have four pillars: performance, participation, prevention through physical activity, and integrity. The reference to the Review Panel concerned the integrity pillar. Integrity, however, plays a fundamental role in ensuring public confidence in, and the ongoing viability of, all elements of the Plan.

Sport has been and continues to be a very important part of life in Australia. At an international level, our athletes have acquired an enviable reputation for their successes and, just as importantly, for their positive competitive spirit and fairness. Similarly, sports organisations and bodies such as the National Integrity of Sport Unit (NISU), the Australian Sports Commission (ASC) and the Australian Sports Anti-Doping Authority (ASADA) have been proactive in deterring, detecting and responding to corrupt behaviour in sport and have similarly been accepted as leaders in their field. This supports the very high level of participation in sport

of so many Australians at national, subelite and grassroots levels.

Australia's sports integrity environment compares favourably with many other countries. However, judging from current international experience, the potential for serious integrity breaches in this country and for the intervention of organised crime by reason of available opportunities remains real, and is growing. Without the presence of a comprehensive, effective and nationally coordinated response capability, the hard-earned reputation of sport in this country risks being tarnished, along with a potential reduction in participation rates and a diminution in the social, cultural and economic value of Australia's significant investment in sport.

The focus of this Review, accordingly, has been on developing an understanding of the nature and level of the threats to sports integrity in Australia, to identify and assess our current sports integrity capability and any current weaknesses, and to propose a nationally coordinated response. Elements for that response include the establishment of a National Sports Integrity Commission (NSIC) and a National Sports Tribunal (NST).

SPORTS INTEGRITY DEFINED

The definition of integrity that we have adopted for this Review is intentionally wide and is capable of capturing the full range of corrupt activity within sport, ranging from serious and organised crime related interventions to minor code and ethics breaches.

By reason of the 2011 National Policy on Match-fixing in Sport (National Policy) and the National Anti-Doping Scheme (NAD Scheme), sporting organisations seeking ASC recognition

and access to government funding have adopted relevant integrity policies (including match-fixing and anti-doping policies) with which athletes and others are required to comply under agreements with the relevant organisation. It is on the implementation of these policies that this Review has focused, with an awareness that those involved in corrupt sporting activities can include athletes, coaches, trainers, managers, match officials and others subject to contractual obligations requiring compliance with relevant policies, and in addition

outsiders who may not be subject to similar conditions, such as venue staff, wagering service providers (WSPs), wagerers, unaccredited sports scientists and player agents.

The challenge that is presented, and that we have addressed in this Review, is one that potentially

impacts on almost every aspect of the sporting environment. Beyond the sporting contest itself, the threat of corruption to the integrity of sport can extend to the way in which athletes are managed and developed, player transfers, salary caps, the purchase of clubs, marketing and sponsorship, the bidding process for events and so on.

SPORTS WAGERING REGULATION – A PROPOSED AUSTRALIAN SPORTS WAGERING SCHEME

Our inquiries have shown that, at the international level, there has been a huge growth in sports wagering, particularly in Asia, which because it is in a similar time zone, makes wagering on Australian sports convenient. This has created a low-risk, high-profit environment for the manipulation of sports competitions (match-fixing) at all levels, but particularly at subelite levels where there is less monitoring and visibility, and also an attractive avenue for organised crime to engage in money laundering.

The current regulated or partially regulated international market has been assessed as being dwarfed by the illegal market, the precise size of which is currently unknown. While in comparison with the international market the regulated Australian market is small, nevertheless it is significant. Recent estimates have assessed the Australian turnover in the sports wagering market in 2015–16 as AU\$9.7 billion, reflecting the highest growth rate of any Australian gambling sector, having increased by 35% from 2014–15 estimates (though notably, still relatively minor in comparison to gaming turnover for the same period, estimated at AU\$176.3 billion).¹

The unregulated and partially regulated offshore market represents a particular concern in relation to the manipulation of sports competitions. Although the size of that market is yet to be definitively established, it is known that a considerable number of offshore WSPs offer markets on Australian sporting competitions and international competitions in which Australians compete, and that Australian consumers place wagers in those markets.

Sports wagering contingencies can take many forms including win/place options, spread bets or points starts, table and season outcomes, and multiple types of 'spot bets' (wagers on particular events within or throughout the course of a match or event), among others. Types of spot bets have

included, for example, first score or first penalty, whether there will be a wide or no-ball in an over in cricket, a double fault in tennis, time of first throw-in in football and so on, which may or may not be an authorised contingency for wagering purposes, and which may have little impact on the outcome of the event.

Methods of placing bets are evolving too – in addition to regular WSPs, over recent years new platforms have emerged, including online betting exchanges² where the consumer makes an offer to back an option at a certain price and that wager can then be matched (or laid) by other consumers, with the betting exchange taking a small commission. This facility allows a consumer to bet that a player or team wins or loses. A more recent threat is the emergence of decentralised prediction markets that allow the backer to be the wagering service provider and post the wagering option the backer wants matched.

Unless a system for ongoing monitoring of the conduct of players and others associated with each particular sport (including support personnel etc.) and of wagering markets is in place including a capacity to gather, collate and assess data and intelligence, the manipulation of sports competitions can be easily achieved and difficult to detect. Those involved can take advantage of various betting platforms and offshore or onshore agents to minimise their exposure by spreading their bets with several WSPs, and thus not attracting scrutiny prompted by suspicious transactions and/or significant odds movement.

While *online* in-play betting is currently forbidden in the Australian market, in-play wagering is legal if carried out through physical wagering outlets (i.e. retail wagering facilities, and in venues and clubs) or via telephone. However, it can also be accessed online by Australians through WSPs offered unlawfully by offshore operators. There are several attractions for Australian consumers to bet

¹ Queensland, 'Australian Gambling Statistics', (33rd Edition, Queensland Government Statistician's Office, 2017)
² Betfair is a licensed, authorised WSP in Australia.

offshore including the availability of better odds, given offshore WSPs do not pay Australian levies, including licence fees and taxes, or product fees to sporting organisations, they can accept in-play bets

online, offer markets outside those authorised for onshore Australian WSPs, and offer anonymity and placement/collection methods that avoid detection by regulatory and law-enforcement agencies.

ESTABLISHING A NATIONAL PLATFORM

A key element of the findings and recommendations of this Review is the need to establish a 'National Platform' for the regulation of sports wagering in Australia, provide an ongoing centralised sport wagering fraud detection and response capability, and stronger international connectivity.

The existence of such a platform is a requirement for compliance with the 2014 Council of Europe Convention on the Manipulation of Sports Competition (Macolin Convention). We have recommended Australia become a party to the Macolin Convention, providing an additional solid foundation of Constitutional authority to legislate a suite of measures at the national level; allowing Australian sports wagering stakeholders access to Macolin Convention working groups which are presently dealing with the same new and emerging issues as are being tackled in Australia; and reinforcing Australia's commitment to a global response to the transnational threats of competition manipulation in sport.

For the reasons outlined above the availability of offshore markets presents a significant challenge to sports integrity. We see the creation of a national platform, with the capacity to regulate sports wagering, gather and assess data and intelligence, and with connections to its overseas counterparts which may have a better capacity to monitor local WSPs and wagering activity, as a positive in the response to the integrity threat arising in this context. It would allow a level of clarity, transparency and consistency in response that is critical, but currently lacking. As such, we have recommended that a national platform with at least the capabilities required for compliance with the Macolin Convention be established, regardless of Australia's status with regard to the Convention.

If the recommendation for the creation of the proposed NSIC later discussed is implemented, then it is recommended that the functions and responsibilities of the National Platform, including

the regulation of sports wagering, be included in its remit once established.

Currently the regulation of that market is complex and attracts considerable administrative expense at the hands of WSPs and sports controlling bodies (SCBs). Most 'corporate' WSPs are licensed in the Northern Territory; however, their online presence in other states and territories, and the online, national presence of historically single-jurisdiction TABs, gives rise to multiple compliance requirements under local laws.

The identification of authorised wagering markets on sporting events has effectively depended on New South Wales and Victorian legislation, and 'product fee and integrity agreements' (PFIAs), mandated by that legislation between sporting organisations and WSPs. PFIAs contain provisions for payment of product fees by WSPs to relevant sporting organisations and for the sports' approval of wagering contingencies, which are given effect through WSP licensing agreements and regulation.

To give full effect to the intended outcomes of the National Policy, it is recommended that an Australian Sports Wagering Scheme (ASWS) be established, with its administration vested ultimately in the NSIC once established. It would include provisions for: the assessment and declaration of national sporting organisations (NSOs) as sports controlling bodies (SCBs), which would confer eligibility for product fees; assessment and declaration of betting providers as Sports WSPs (SWSPs) carrying authority to offer markets on Australian sports; determination and ongoing review of authorised contingencies following consultation with NSOs, SWSPs, law enforcement, state and territory regulatory agencies, including appropriate risk assessment; and the establishment of a Suspicious Activity Alert System (SAAS) enabling real-time receipt and dissemination of alerts, permitting a timely and decisive response, and requiring participation as a condition of SCB and SWSP status.

INTEGRITY BREACHES – CRIMINAL OFFENCES

We have given careful consideration to the extent to which integrity breaches might attract the attention of the criminal law, and to the adequacy of Australian law currently to provide an appropriate response.

The manipulation of sports competitions will normally be wagering-related, although it can also occur to obtain a sport-related benefit. This may involve, for example, securing a favourable position in a draw or assisting placement in a ranking or qualification points system, which might help in preserving tournament eligibility, or in providing an advantage in a post-season draft.

In relation to wagering-related manipulation of sports competitions, all states and territories other than Western Australia and Tasmania have introduced sports-specific offences. The existence of significant differences in the relevant legislation is a matter for concern in this context, where the conduct of those involved can cross domestic and even international boundaries. We cite that the communication and use of inside information is not an offence in the Victorian legislation. While the provision of inside information might be viewed by some as being towards the bottom of the scale, it nevertheless must be regarded as serious as it disadvantages the wagerer not privy to the inside information and, significantly, is often the starting point in a grooming process of a player (or other relevant person/s) by criminals. Accordingly, we believe the offence requires a higher grading in the proposed national legislation, whereby it will allow for investigative techniques such as telecommunication interception.

Apart from any specific offence relating to the manipulation of sports competitions, the criminal law can potentially be engaged as the result of other activity that may influence the behaviour

of participants in a sting. For example, the participation of those involved may have been procured through the supply of illicit drugs, extortion (for example, where the athlete or participant has accumulated significant gambling debts), bribery or blackmail. As a consequence, general law offences may be available, including the engagement of accessory principles and ancillary offences of conspiracy, concealment, participation in criminal organisations, consorting and attempt/procure.

In relation to doping, criminal offences may be engaged in relation to the importation, supply and possession of proscribed substances, which may attract a wider application of general law principles similar to those mentioned above.

We consider in the light of the foregoing and the complexities that arise within a federal context that it is desirable that offences relating to the manipulation of sports competitions and related corruption be introduced by the Australian Government and inserted into the *Criminal Code Act 1995* and that harmonisation of Commonwealth and state and territory offence provisions be encouraged. Legislation is not seen to be necessary in relation to those other forms of manipulation that are directed towards securing other sporting advantages. They can be dealt with by sports under their integrity codes. However, a role might be preserved for monitoring of such activity by the proposed NSIC.

Recommendations are accordingly made for the introduction of match-fixing offences, similar to those in force in New South Wales, and for harmonisation of existing state/territory and federal offences. The penalties should be calibrated so as to enliven telecommunication interception and surveillance powers.

ANTI-DOPING RESPONSE

ASADA delivers anti-doping services in Australia, including testing for and investigating possible anti-doping rule violations (ADRVs). We have considered several issues and possibilities for streamlining these processes.

Through international and local experience, it has become evident that a greater emphasis needs to be placed on detecting ADRVs through intelligence-based investigations that have an extra benefit in activating retrospective testing of samples previously tested as negative. The

importance of this has been demonstrated by the evolution and use of sophisticated new doping methods and evasion strategies, widespread use of sports supplements and performance and image enhancing substances (PIEDs), and involvement of criminal gangs in the importation and supply of prohibited substances and illicit drugs to athletes.

In relation to testing for ADRVs, concerns have arisen in relation to the costs of analysis conducted by the Australian Sports Drug Testing Laboratory (ASDTL), through which ASADA conducts sample

analysis under current government policy. ASDTL's costs are very high compared with many other World Anti-Doping Agency (WADA) accredited laboratories, which has left ASADA less competitive in the user-pays sector, and has an adverse impact on its budget. Also, as ASDTL is not competitive on analytical costs, ASADA loses intelligence-gathering capacity when user-pays samples are sent to other laboratories.

The current ADRV process has been assessed by ASADA and by a number of sports in submissions to be dilatory and unnecessarily cumbersome. In this respect, the role of the Anti-Doping Rule Violation Panel (ADRVP) has been questioned, as has the possible right of review by the Administrative Appeals Tribunal (AAT) concerning the threshold for the ADRVP to make an assertion. Submissions also concerned the costs and delays in finalising proceedings in the Court of Arbitration for Sport (CAS). While it is recognised that compliance with the World Anti-Doping Code (Code) means that its jurisdiction must be preserved in those cases where athletes or WADA have a right to adjudication by it, identified alternatives, as outlined later in this summary, received support from several quarters.

Recommendations in response to these and other identified concerns include:

- ensuring that ASADA is adequately resourced and financially sustainable to be an effective National Anti-Doping Organisation (NADO) that can maintain a sufficiently comprehensive detection program through testing and deploying enhanced intelligence-based investigations
- resolving the long-standing issues concerning the costs and sustainability of the doping sample analysis system
- introducing regulatory compliance powers to be exercised by the proposed NSIC, with the Chief Executive Officer (CEO) of ASADA, to enhance

the audit and enforcement role of ASADA in relation to Code compliance by sports

- increasing the outreach, education and training capacity of ASADA to ensure a better understanding by athletes of the Code, its processes and their rights and responsibilities, in particular with an enhanced reach to those below national level, including pipeline and development athletes
- addressing procedural weaknesses including extending statutory protections to NSOs, facilitating information sharing with statutory protections attaching to information conveyed by ASADA to other relevant bodies, removing the current privileges in relation to information provided to ASADA (while preserving the privilege against its use in criminal proceedings), conferring a greater discretion in relation to penalties in the case of lower level athletes and conferring greater whistleblower protection
- streamlining the ADRV process so that a response from the subject of an ADRV allegation is sought no more than once before an infraction notice is issued
- reconsidering the role of the ADRVP, including its possible removal as part of the ADRV process, either completely or in relation to analytical ADRVs, and/or deploying it to act as an expert panel available to advise ASADA.

Other issues identified and dealt with in the report concern improvements to values-based education that is athlete level specific, ongoing development of expertise in conjunction with the Australian Sports Drug Medical Advisory Committee (ASDMAC), proactive work in identifying emergent performance-enhancing substances as well as issues with their marketing and mislabelling that may give rise to inadvertent ADRVs.

ESTABLISHING A NATIONAL SPORTS INTEGRITY COMMISSION

Another key element of the findings and recommendations of this Review is the need for a single national capability with the responsibility of ensuring the delivery of a coordinated response to current and future threats across the entire sports integrity continuum.

We have recommended that the NSIC be established to fulfil this function and that it takes on all aforementioned responsibilities and functions of the National Platform. In addition to these functions, once established, we have recommended

that the NSIC has a broad remit, including assuming some roles currently performed by the NISU and ASC.

Working with state and federal regulatory authorities and law-enforcement agencies, including the ASC, ASADA, the Australian Criminal Intelligence Commission (ACIC), the Department of Home Affairs, state/territory and national gambling authorities and sports commissions, and other agencies, it would be well placed to ensure a coordinated national response to sports integrity

threats in this country. This in particular would continue the work that the NISU has carried out in partnership with the ACIC through the Sports Betting Integrity Unit (SBIU).

As proposed, the NSIC would have status as a law-enforcement agency with three primary areas of focus:

- monitoring, intelligence and investigations with respect to possible doping activity and manipulation of sports competitions and related corruption, including collection and collation of intelligence held by other agencies
- policy and program delivery, including outreach, education and development assistance to sports in implementing policies and appropriate practices in responding to possible integrity breaches
- regulation of sports wagering (through the ASWS) and integrity issues, including oversight as to sports' implementation and adherence to appropriate integrity policies.

Once established, it would be Australia's National Platform for the purposes of the Macolin Convention and would be expected to have the powers and capabilities that are required to address the threat of competition manipulation as outlined in Article 13 of the Convention, and would be in a position to monitor compliance with the Code.

There are a number of advantages in creating the proposed NSIC. It would provide a means of collecting and assessing relevant intelligence in one place, giving a greater visibility to emerging threats

than has been possible to date. The several silos, in which intelligence has been held across state and territory agencies, and SCBs and WSPs, has interrupted or at times prevented the information flow that is important for an effective response.

It will allow the intended outcomes of the National Policy agreed by all Australian governments in 2011, which is only partially implemented, to be fully realised through a truly national system, not only in relation to intelligence gathering and dissemination between appropriate agencies but also in providing support and assistance to smaller sports with limited resources.

As Australia's National Platform under the authority of the Australian Government, it will be better placed to work with international sports controlling and regulatory bodies, as well as with international law-enforcement agencies in all aspects of sports corruption. It would provide a single point of contact for athletes, sporting organisations (including SCBs), WSPs and others, in relation to sports integrity matters, including the provision of advice and assistance in ensuring their compliance with the Code and other requirements, and incorporating/consolidating the work of other organisations or strategies such as Play by the Rules and the Good Sports Program.

The recommendations made on the establishment, functions and powers of the NSIC are seen to be important in circumstances where the sports integrity environment is evolving quickly and where it is important to preserve the confidence of the sporting community and general community in the safety and desirability of sport participation.

ESTABLISHING A NATIONAL SPORTS TRIBUNAL

Currently, most members of the Coalition of Major Professional and Participation Sports (COMPPS) employ in-house dispute resolution tribunals to deal with ADRVs and other integrity/code breaches. Some also have internal appeal mechanisms. These tribunals are constituted by experienced lawyers and others with sports medicine expertise or significant sporting backgrounds, and are well respected. Many smaller sports do not have the same resources or capacity to establish in-house integrity units or dispute resolution bodies; as such their rules may permit or require referral to a CAS hearing or to an ad hoc tribunal.

A fragmented approach risks inconsistency and unpredictability in outcomes for the large range of issues that might need resolution. They can range from ADRV matters to serious breaches of other

integrity policies, including underperformance (tanking), misbehaviour in public, use of illicit drugs and selection challenges.

We have recommended the establishment of a NST to address the shortcomings of the current system, to provide an expert, central hearing body that can supplement the work of sports' current internal dispute resolution arrangements and provide a dispute resolution forum for the smaller sports.

As proposed, the NST would be conferred with private arbitration powers but would also be able to engage in mediation, conciliation and other dispute resolution strategies for the prompt and cost-effective resolution of cases brought to it. Similarly to existing sports' internal dispute resolution arrangements, it would have access to a panel of experts who are experienced in sports law

or who have backgrounds that qualify them through practical experience to determine sporting issues.

As proposed, the NST would have three divisions: Anti-Doping, General and Appeals.

We propose the Anti-Doping Division operate in an 'opt-out' system whereby the default position will be that all ADRV matters subject to first-instance dispute resolution will be heard by that division, with the exception of ADRV matters in sports that operate their own internal tribunal. Similarly, appeals of first-instance decisions would be heard by the proposed NST Appeals Division, again with the exception of the small number of professional sports which operate internal appeals tribunals. While it is our view that one body of ADRV dispute resolution would be preferable for consistency and efficiency, we recognise the existence of sport-run internal tribunals and the preference of some sports to retain this jurisdiction. However, approval of the proposed NSIC will be needed for the operation by sports of both first-instance and appeal tribunals.

In relation to the General Division, the engagement of the NST would depend on individual sports 'opting in' to have integrity and other disputes resolved in the NST, both at first-instance and appellate level. In this respect, the opt-in could be general or confined to specified issues, as established by the agreement between the relevant sport and contracted parties, with the approval of the NST.

Ultimately, resolution of disputes whether in respect of ADRVs or otherwise are always, at least in part, dictated by the rules of the sporting

organisation, and in the case of ADRV matters, the organisation with responsibility for managing the results of sample analysis (either ASADA or the relevant international federation). Also, in ADRV cases, both international and national-level athletes may, with the consent of ASADA and WADA, have their matter heard in the CAS Appeals Arbitration Division without the need for a prior hearing. In this respect, it is the intention that all requirements of the Code will be preserved in the proposed system.

The NST's approval is required in respect of the jurisdiction of the general division, as this jurisdiction is not anticipated to cover all other disputes unrelated to anti-doping. It is not expected that the general division's jurisdiction would extend to, for instance, commercial contract disputes that are suited to decision in the regular courts of law, or to on-field violations not amounting to breaches of integrity policies, or to behavioural issues that are capable of being dealt with at sport level.

In proposing this model, we have drawn on the experience of dispute resolution mechanisms in other countries such as Canada, New Zealand and the United Kingdom with modifications that we consider appropriate for Australia. Advantages of the model include the conferral of powers to compel evidence from third parties who may not be subject to contractual obligations to cooperate with inquires or hearings, the preservation of actual and apparent independence from sports' in-house tribunals, the ability to deliver transparency through release of its decisions, and the provision of a timely and cost-effective resolution process.

RECOMMENDATIONS

MANIPULATION OF SPORTING COMPETITIONS

1. That Australia become a party to the Council of Europe Convention on the Manipulation of Sports Competitions (Macolin Convention), allowing the enactment of national match-fixing criminal legislation, supporting an effective global response to international sports integrity matters, acknowledging the transnational nature of match-fixing and related corruption in sport, and recognising the global quality of threats to the integrity of Australian-based competitions.
2. That the Australian Government establish national match-fixing offences similar to those in New South Wales, while continuing to encourage national consistency in relevant criminal provisions introduced by state and territory governments.
3. That Commonwealth criminal offences be formulated such that:
 - offence provisions have transnational application
 - match-fixing offences are linked to wagering outcomes, irrespective of whether said wager would have been otherwise lawful
 - provisions include offences for the use of inside information
 - offence provisions (including for sentencing) are calibrated such as to enliven the possibility of utilising telecommunication intercept powers
 - offence provisions are calibrated such as to ensure that any applicable time limit for start of proceedings will not interfere with reasonably conducted investigations of the type anticipated.
4. That the regulation of sports wagering become subject to an Australian Sports Wagering Scheme to streamline current processes and to provide clarity, transparency and consistency of the regulatory regime at a national level, with regulatory responsibilities to sit within the proposed National Platform (outlined below).
5. That the Australian Sports Wagering Scheme (ASWS) give full effect to the operational model for sports betting anticipated in the National Policy, including requirements for information and intelligence gathering and sharing by sporting organisations and Wagering Service Providers (WSPs). Through the ASWS, the National Platform is to be responsible for:
 - assessing and declaring, as appropriate, NSOs as Sports Controlling Bodies (SCBs) for the purposes of the ASWS and to be eligible to enter into product fee arrangements
 - assessing and declaring WSPs, otherwise licensed as a wagering service provider in a state or territory, as a 'sports wagering service provider' for the purposes of the ASWS, and to be authorised to offer markets on Australian sport.
6. That the administration of the Australian Sports Wagering Scheme, particularly in respect of the assessment of applications from National Sporting Organisations and Wagering Service Providers for relevant recognition, be such as to bring together a range of expertise including from the Australian Criminal Intelligence Commission, Australian Communications and Media Authority, Australian Sports Anti-Doping Authority, Australian Sports Commission, and National Integrity of Sport Unit to ensure that a robust system of integrity oversight, monitoring and compliance is in place.
7. That Sports Controlling Body recognition from the National Platform, involving an assessment of the sufficiency of the integrity policies and procedures implemented by National Sports Organisations (including anti-doping policies, anti-match-fixing policies and engagement, where appropriate, of the jurisdiction of the National Sports Tribunal (below)), to be a prerequisite for government funding and recognition.
8. That the National Platform have, as part of the Australian Sports Wagering Scheme, a dispute resolution function to be exercised in circumstances in which an agreement cannot be reached between a Sports Wagering Service Provider (SWSP) and Sports Controlling Body (SCB). Also, that the National Platform

have available compliance and enforcement powers for SWSPs or WSPs offering wagering markets on contingencies that are not authorised, and/or the subject of an agreement between the SWSP and the relevant SCB.

9. That the National Platform be responsible for determining and publishing a schedule of authorised wagering contingencies, following consultation, and in collaboration with law enforcement, sporting organisations, Sports Controlling Bodies, Wagering Service Providers and state and territory regulators.
10. That consideration be given to allowing online in-play wagering in Australia through authorised Sports Wagering Service Providers (SWSPs) to provide a more effective identification of potential wagering-related match-fixing or other forms of sports corruption, and so as to allow sports, authorised Australian SWSPs and governments to receive the financial benefits generated.

A NATIONAL PLATFORM

11. That, whether or not Australia becomes a party to the Macolin Convention, and initially independent, if necessary, of the establishment of the proposed National Sports Integrity Commission, the Australian Government, as a matter of urgency, formalise and expand the work of the Sports Betting Integrity Unit by establishing a 'National Platform' type entity with the powers and capabilities required to address the threat of match-fixing as outlined in Article 13 of the Macolin Convention (including the national regulation of sports wagering, administering the Australian Sports Wagering Scheme, and for information and data sharing).
12. That, on the establishment of the proposed National Sports Integrity Commission (NSIC), the functions, powers and capabilities of the National Platform be subsumed within the NSIC, as part of the its broader regulatory and law-enforcement function. The NSIC will then be identified as Australia's 'National Platform' for the purposes of satisfying Article 13 of the Macolin Convention.
13. That the National Platform facilitate a Suspicious Activity Alert System (SAAS), enabling real-time receipt and dissemination of alerts, collection of responses and assessment of integrity risk, to allow timely and decisive action. Participation in the SAAS is to become a condition of Sports Wagering Service Provider status, with the National Platform to have the authority to nationally suspend wagering markets where significant risk of match-fixing is identified.
14. That a central clearinghouse function be established within the National Platform to receive, assess and disseminate data, information and intelligence from Sports Wagering Service Providers (SWSPs) and Sports Controlling Bodies (SCBs), including:
 - line-by-line transaction data and account information from SWSPs (including for sports wagering and racing)
 - all relevant player, support personnel and other sport integrity related data (including as might be deemed relevant from time to time) from SCBs.
15. That provision of relevant sports integrity related data, information and intelligence (including the reporting of any suspicious activity in a timely manner) be a condition of Sports Controlling Body and Sports Wagering Service Provider status.
16. That the National Platform have status as a law-enforcement agency to receive, deal with and disseminate law enforcement and private information.

ANTI-DOPING – REGULATION

17. That the Australian Sports Anti-Doping Authority be retained as Australia's National Anti-Doping Organisation and that the current requirement for all National Sporting Organisations (including sports with competitions only up to the national level) to have anti-doping rules and policies that comply with the World Anti-Doping Code also be retained.
18. That the Australian Sports Anti-Doping Authority's regulatory role and engagement with sports in relation to the audit and enforcement of sport's compliance with anti-doping rules and approved

policies be enhanced by establishing regulatory compliance powers exercisable by the proposed National Sports Integrity Commission in collaboration with (and at the request of) the Australian Sports Anti-Doping Authority CEO.

19. That the introduction of regulatory amendments to the *Australian Sports Anti-Doping Authority Act 2006* (Cth) (ASADA Act) be considered to provide for:
- extending statutory protection against civil actions to cover National Sports Organisations (NSOs) in their exercise of Anti-Doping Rule Violation (ADRV) functions
 - facilitating better information sharing between ASADA and NSOs through enhancing statutory protections over information provided to an NSO by ASADA
 - empowering the ASADA CEO to comment on current cases under broader circumstances than currently permissible under s 68E of the ASADA Act, including where misinformation has been published
 - empowering the ASADA CEO to exercise discretion in respect of lower level athletes to apply more flexible rules in accordance with guidelines to be developed but maintaining compliance with the Code.

ANTI-DOPING EDUCATION AND OUTREACH

20. That the Australian Sports Anti-Doping Authority and the sports sector should increase their respective investments in anti-doping education, collaborating to deliver more effective education and training packages with greater reach below national-level athletes (with the benefit of the example provided by United Kingdom's Anti-Doping Education Delivery Network, World Anti-Doping Agency (WADA) and other education programs established by other National Anti-Doping Organisations). Education and training programs to focus on:
- information on the testing process and allied rights of athletes
 - the need for values-based education.

ANTI-DOPING TESTING AND INVESTIGATIONS

21. That the Australian Government ensure that the Australian Sports Anti-Doping Authority is adequately resourced and financially sustainable, enhancing its capacity to engage with sports and be an effective and responsive regulator and National Anti-Doping Organisation.
22. That the Australian Government resolve longstanding issues regarding the costs and sustainability of the sample analysis system in Australia to enable an effective testing program, and ensure that the Australian Sports Anti-Doping Authority is commercially competitive in the user-pays market.
23. That the Australian Sports Anti-Doping Authority's investigative capability be enhanced by:
- establishing, through collaboration with the sporting sector, guidelines for the conduct of anti-doping investigations which clearly define the roles and responsibilities of government agencies (including the Australian Sports Anti-Doping Authority (ASADA) and the sporting sector (subject to the Australian Government Investigations Standards)
 - establishing strong information and intelligence sharing links with law-enforcement agencies and regulatory agencies, including with and through the proposed National Sports Integrity Commission (NSIC) (with consideration being given to the application of the *Privacy Act 1988* (Cth) and any need for amendment, including conferring law-enforcement status on ASADA and the NSIC)
 - strengthening ASADA's disclosure notice regime by:
 - excluding the right to claim privilege against self-incrimination when answering a question or providing information to ASADA, while providing, where an objection or privileged is raised, appropriate protections against non-direct or derivative use in any criminal prosecution
 - ensuring that sanctions for non-compliance with disclosure notices are appropriate
 - establishing whistleblower protections.

ANTI-DOPING ENFORCEMENT AND SANCTION (PRE-HEARING)

24. That the Anti-Doping Rule Violation (ADRV) process be streamlined, but remain responsive to the increasing emphasis on non-adverse analytical finding (non-AAF) ADRVs. That this be achieved through:
- amending the statutory process so that a response to ADRV allegations from an athlete or support person is sought no more than once prior to the issue of an infraction notice
 - removing recourse to the Administrative Appeals Tribunal for review of any aspect of the pre-hearing ADRV process
 - retaining the expertise of Anti-Doping Rule Violation Panel members in an advisory capacity or as arbitrators for the proposed National Sports Tribunal.

THE ROLE OF THE AUSTRALIAN SPORTS DRUG MEDICAL ADVISORY COMMITTEE

25. That, in recognition of the extra services that the Australian Sports Drug Medical Advisory Committee (ASDMAC) provides to the Anti-Doping Rule Violation process and the appropriateness (or otherwise) of these services being provided by the ASDMAC, the Australian Sports Anti-Doping Authority consider, as an alternative, strategies for incorporating more medical expertise within its workforce.

A NATIONAL SPORTS TRIBUNAL

26. That the Australian Government establish an independent arbitral tribunal for sports matters – the National Sports Tribunal.
27. That the National Sports Tribunal be established by statute, exercising powers of private arbitration underpinned by legislation.
28. That the National Sports Tribunal have available appropriate powers to facilitate the effective resolution of cases, including the power to order witnesses to appear before it to give evidence, and/or to produce documents or things; and the power to inform itself independent of submissions by the parties.
29. That the National Sports Tribunal be an independent statutory authority accountable to the Australian Government, and not be subject to ministerial direction except under limited circumstances.
30. To improve current national sports dispute resolution arrangements, the National Sports Tribunal (NST) must:
- be cost effective for both sports and participants, with funding provided in part by government and in part on a user-pays basis (on a sliding scale based on financial capacity)
 - be efficient, including with regard to clear, consistently applied, and flexible practice and procedure
 - be transparent – publishing decisions by default, with discretion to withhold confidential material or sensitive decisions by the NST on application by the parties
 - have pre-eminent arbitrators available on a closed list, with appointment to the list by application and selection processes conducted by the proposed National Sports Integrity Commission in consultation with the Minister for Sport.

STRUCTURE OF THE NATIONAL SPORTS TRIBUNAL

31. That the National Sports Tribunal (NST) have two first-instance divisions – the Anti-Doping Division, and the General Division, and that the NST also offer an Appeals Division for both the Anti-Doping Division and General Division. A further avenue of appeal to CAS Appeals Arbitration Division be available in all instances where this is a requirement for maintaining compliance with the Code.

THE NATIONAL SPORTS TRIBUNAL ANTI-DOPING DIVISION

32. That the National Sports Tribunal be the default dispute resolution body responsible for arbitrating anti-doping matters *other than* in circumstances where a sporting organisation has approval from the National Sports Integrity Commission for in-house dispute resolution arrangements (conditional 'opt-out' jurisdiction).
33. That, in recognition of the extra powers available to the National Sports Tribunal (NST) to order witnesses to appear before it to give evidence, and/or to produce documents or things; an athlete or support person subject to an Anti-Doping Rule Violation assertion, who participates in a sport which has an National Sports Integrity Commission-approved internal dispute resolution tribunal, be entitled to seek leave from that tribunal to have their matter heard in the NST where justice requires. A similar provision should apply to the Australian Sports Anti-Doping Authority or the Sports Controlling Body where that is necessary for a fair and just outcome.
34. That in circumstances where the National Sports Tribunal (NST) is the hearing body for first-instance Anti-Doping Rule Violation matters, appeals be heard at the option of the aggrieved party by the NST Appeals Division, or the Court of Arbitration for Sport Appeals Arbitration Division (as appropriate, and subject to the rules of the sport).
35. That engagement with the conditional opt-out system for Anti-Doping Rule Violation arbitration be a requirement of achieving and maintaining sports controlling body status (required for Australian Sports Commission funding and to participate in the Australian Sports Wagering Scheme).

THE NATIONAL SPORTS TRIBUNAL GENERAL DIVISION

36. That the National Sports Tribunal (NST) also exercise jurisdiction to resolve other sport disputes, in so far as athletes and support personnel, and sporting organisations, have elected through contractual arrangements to have disputes of particular types resolved by the NST (the 'opt-in' jurisdiction of the NST) in its General and Appeals Divisions as may be required.
37. For general disputes, that the National Sports Tribunal (NST) be established in such a way that it can provide arbitration, mediation and conciliation services, depending on the needs of the sporting organisation and, where appropriate, the right of appeal to the proposed NST Appeals Division.

A NATIONAL SPORTS INTEGRITY COMMISSION

38. That the Australian Government establish a National Sports Integrity Commission to cohesively draw together and develop existing sports integrity capabilities, knowledge and expertise, and to nationally coordinate all elements of the sports integrity threat response including prevention, monitoring and detection, investigation and enforcement.
39. That the National Sports Integrity Commission be identified as Australia's National Platform for the purposes of the Macolin Convention.
40. That the National Sports Integrity Commission have three primary areas of focus:
 - regulation
 - monitoring, intelligence and investigations
 - policy and program delivery (including education, outreach and development).

NATIONAL SPORTS INTEGRITY COMMISSION – REGULATION

41. That the National Sports Integrity Commission be responsible for overseeing and coordinating the regulation of sports wagering in Australia, working in close collaboration with state and territory gambling regulators, sports controlling bodies and wagering service providers, as part of the proposed Australian Sports Wagering Scheme.
42. That the National Sports Integrity Commission (NSIC) be authorised to deal with information captured by the *Privacy Act 1988* (Cth), and have the ability to collect and use 'sensitive information' about a person without consent. The NSIC be designated as a law-enforcement agency to have the confidence of international and Australian law-enforcement agencies as both a receiver and provider of personal information, and material alleging criminality.

NATIONAL SPORTS INTEGRITY COMMISSION – MONITORING, INTELLIGENCE AND INVESTIGATIONS

43. That a formal, ongoing Sports Betting Integrity Unit (SBIU) be established within the National Sports Integrity Commission (with functions transferred from the SBIU recently established within the ACIC) to allow for the systematic receipt, assessment and dissemination of information relating to suspicious betting activity, and undertake an ongoing regulatory monitoring, compliance and enforcement function.
44. That a Joint Intelligence and Investigations Unit (JIU) be established in the National Sports Integrity Commission, with dedicated representatives of state and territory law-enforcement agencies, as well as relevant Commonwealth agencies including the Australian Criminal Intelligence Commission, Australian Federal Police, Australian Sports Anti-Doping Authority, and the Department of Home Affairs. The JIU is to be responsible for: intelligence collection and analysis for a broad range of sports integrity issues; liaison with domestic and international law-enforcement agencies and criminal intelligence commissions; and referral services – to law enforcement in criminal matters, and to sporting organisations for code of conduct issues.
45. That a Strategic Analysis Unit be established as part of the National Sports Integrity Commission, and be responsible for conducting open-source threat identification and analysis including: monitoring of illegal offshore wagering market framing; conducting strategic and threat analyses and providing advice (including in relation to sports integrity threat overviews); and determining a schedule of authorised wagering contingencies.
46. That the National Sports Integrity Commission (NSIC) work closely with the Australian Criminal Intelligence Commission (ACIC) and that the ACIC be resourced to maintain a standing, advanced sports criminal intelligence capability to: enable enhanced analysis and exploitation of NSIC data and intelligence products; support the NSIC through advanced intelligence capabilities; and proactively develop intelligence on serious organised criminality linked to sport but outside the remit of the NSIC (e.g. money laundering through Wagering Service Providers).
47. That a whistleblower scheme encompassing all sports integrity issues, and a related source protection framework, be administered by the National Sports Integrity Commission.
48. That the National Sports Integrity Commission work with major professional sports regarding illicit drugs policies with a view to seeking access to results of sample analysis for the purposes of integrating with intelligence and analysis capabilities.

NATIONAL SPORTS INTEGRITY COMMISSION – POLICY AND PROGRAM DELIVERY

49. That consideration be given to the National Sports Integrity Commission becoming responsible for centrally coordinating sports integrity policy functions previously executed by a number of different organisations including the Australian Sports Commission, Good Sports Program (through the Alcohol and Drug Foundation) and National Integrity of Sport Unit.
50. That the National Sports Integrity Commission be a single point of contact for athletes, sporting organisations, Sports Wagering Service Providers, and other stakeholders for matters relating to sports integrity.
51. That the National Sports Integrity Commission provide direct assistance to small and emerging sports in Australia that lack capacity to deal with integrity issues.
52. That a single, easily identifiable education and outreach platform be established within the National Sports Integrity Commission (NSIC), dedicated to developing and coordinating education, training and outreach resources and programs in collaboration with the Australian Sports Anti-Doping Authority, Australian Sports Commission, sports (particularly Coalition of Major Professional and Participation Sports integrity units) and athletes, including athletes' associations. Administration of existing initiatives and forums, including the Australian Sports Integrity Network, Jurisdictional Sports Integrity Network, Betting Regulators forum and Play by the Rules, should be incorporated into the NSIC education and outreach platform.

LIST OF ACRONYMS AND ABBREVIATIONS

Term	Description
AAA	Australian Athletes' Alliance
AAF	adverse analytical finding
AAT	Administrative Appeals Tribunal
ABF	Australian Border Force
ACIC	Australian Criminal Intelligence Commission
ACMA	Australian Communications and Media Authority
ADD	Anti-Doping Division
ADRV	Anti-Doping Rule Violation
ADRVP	Anti-Doping Rule Violation Panel
AEC	Australian Electoral Commission
AFP	Australian Federal Police
AIC	Australian Institute of Criminology
ANZSLA	Australian New Zealand Sports Law Association
ASADA	Australian Sports Anti-Doping Authority
ASC	Australian Sports Commission
ASDA	Australian Sports Drug Agency
ASDMAC	Australian Sports Drug Medical Advisory Committee
ASDTL	Australian Sports Drug Testing Laboratory
ASWS	Australian Sports Wagering Scheme
CAS	Court of Arbitration for Sport
Code	World Anti-Doping Code
COMPPS	Coalition of Major Professional and Participation Sports
DFSNZ	Drug Free Sport New Zealand
DIBP	Department of Immigration and Border Protection
FSANZ	Food Standards Australia New Zealand
FSB	Federal Security Bureau
GD	General Division
IOC	International Olympic Committee
IBIS	International Olympic Committee – Integrity Betting Intelligence System
IGA	Interactive Gambling Act
ISOs	International Sporting Organisations
JIIU	Joint Intelligence and Investigations Unit

Term	Description
Macolin Convention	Council of Europe Convention of the Manipulation of Sports Competition
MLB	Major League Baseball
NAD Scheme	National Anti-Doping Scheme
NADO	National Anti-Doping Organisation
National Policy	National Policy on Match-Fixing in Sport
NBA	National Basketball Association
NHL	National Hockey League
NISU	National Integrity of Sport Unit
NSIC	National Sports Integrity Commission
NSOs	National Sporting Organisations
NST	National Sports Tribunal
PFIAs	Product Fee and Integrity Agreements
PIEDs	Performance and Image Enhancing Drugs
RWA	Responsible Wagering Australia
SAAS	Suspicious Activity Alert Scheme
SAU	Strategic Analysis Unit
SBIU	Sports Betting Integrity Unit
SBOM	Sport Betting Operational Model
SCBs	Sports Controlling Bodies
SIA	Sport Investment Agreement
SITAM	Sports Integrity Threat Assessment Methodology
SRUK	Sport Resolutions United Kingdom
SSO	State Sporting Organisation
SUSMP – 'Poisons Standard'	Standard for the Uniform Scheduling of Medicines and Poisons
SWSP	Sports Wagering Service Provider
TGA	Therapeutic Goods Administration
TUE	Therapeutic Use Exemption
UKAD	United Kingdom Anti-Doping
WADA	World Anti-Doping Agency
WSP	Wagering Service Provider

LIST OF SUBMISSIONS AND CONSULTATIONS

SUBMISSIONS

Submissions were received from the following stakeholders.

SPORT SECTOR

Australian Athletes' Alliance
Australian Paralympic Committee
Coalition of Major Professional and Participation Sport
Commonwealth Games Australia
eSports Mogul
Play by the Rules

AUSTRALIAN GOVERNMENT

Australian Sports Anti-Doping Authority (ASADA)
Department of Social Services (DSS)

STATE/TERRITORY GOVERNMENT

Department of National Parks, Sport and Racing – Queensland Government
Department of the Attorney-General and Justice – Northern Territory Government
Department of Treasury and Finance – Tasmanian Government
The Hon. John Eren MP (on behalf of the Victorian Government)

LAW ENFORCEMENT

Australian Criminal Intelligence Commission (ACIC)
Australian Federal Police (AFP)
Queensland Police Service
Tasmania Police
Victoria Police

WAGERING SECTOR

Responsible Wagering Australia (RWA)
Tabcorp

INTERESTED PARTIES

Addisons
Danny Corcoran
Melinda Downie
Darrell Egan
Graham Flynn
Bruce Francis
Allan Hird
Michael Horoba
Alan Jones AO
David Maiden
Wayne Morison
Robert O'Dea
Michael Pederson
Tony Robinson

CONSULTATIONS

The following stakeholders were consulted by the Review Panel.

SPORT SECTOR

Australian Athletes' Alliance
Australian Football League
Australian Olympic Committee
Australian Paralympic Committee
Basketball Australia
Coalition of Major Professional and Participation Sports
Commonwealth Games Australia
Cricket Australia
Football Federation Australia
National Rugby League
Rugby Australia
Swimming Australia
Tennis Australia

AUSTRALIAN GOVERNMENT

Australian Communications and Media Authority (ACMA)
Australian Criminal Intelligence Commission (ACIC)
Australian Sports Anti-Doping Authority (ASADA)
Australian Sports Commission (ASC)
Department of Social Services (DSS)
Play by the Rules

STATE GOVERNMENT

Victoria Department of Justice and Regulation – Liquor, Gaming and Racing
New South Wales Department of Industry – Liquor and Gaming NSW

SUBJECT MATTER EXPERTS

Professor Jack Anderson – Sports Law, University of Melbourne
Ben McDevitt AM APM – former ASADA CEO
Professor Andrew McLachlan – Chair, Australian Anti-Doping Rule Violation Panel (ADRVP)
John O'Callaghan – Victorian magistrate
Hayden Opie AM – CAS member, former ADRVP member, former Professor of Sport Law, Melbourne Law School
Dr Susan White – Chair, Australian Sports Drug Medical Advisory Committee (ASDMAC)

LAW ENFORCEMENT

Australian Federal Police (AFP)
NSW Police
Victoria Police

WAGERING SECTOR

Racing Australia
Responsible Wagering Australia (RWA)
Sportradar
Tabcorp

INTERNATIONAL ORGANISATIONS

Anti-Doping Denmark
Canadian Centre for Ethics in Sport
European Sport Security Association (ESSA)
Sport Betting Integrity
Institute of National Anti-Doping Organisations (iNADO)
Japan Anti-Doping Agency
Japan Sports Council
Sport and Recreation New Zealand
Sport Ireland
Sport Resolutions UK
UK Anti-Doping
UK Gambling Commission

NATIONAL SPORT PLAN SUBMISSIONS COVERING SPORTS INTEGRITY

Submissions to the National Sport Plan that dealt with integrity issues were received from the following stakeholders.

SPORT SECTOR

Australian Athletes' Alliance
Australian Football League
Australian Olympic Committee
Australian Paralympic Committee
Coalition of Major Professional and Participation Sport
Confederation of Australian Motor Sports
Cricket Australia
Exercise and Sports Science Australia
Football NSW
Gymnastics Australia
National Rugby League
Netball Australia
Netball NSW
Rugby Australia
Sport NSW
Sport SA
Sports Disputes Mediation Centre
Surf Life Saving Australia
Swimming Australia
Tennis ACT
Tennis Australia
Triathlon Australia
VicSport
Water Polo Australia

WAGERING SECTOR

Responsible Wagering Australia (RWA)

INTERESTED PARTIES

Alcohol and Drug Foundation
Australian Psychological Society
University of Technology Sydney
Victoria University

INTERNATIONAL ORGANISATIONS

ESSA Sport Betting Integrity

INDIVIDUALS

Annette Greenhow
Individual – no name given
Individual – no name given (2)

CHAPTER

1

INTRODUCTION

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I. BACKGROUND

For many years the integrity of sport has been under threat internationally, in particular through doping scandals and competition manipulation.

Australia has not been immune from such events. Comparatively, Australian efforts over recent years to minimise sport corruption – through prevention, disruption and prosecution – have been quite successful.

At the Australian Government level, three key agencies have had the responsibility to drive the response to this risk.

1.1 AUSTRALIAN SPORTS COMMISSION

The Australian Sports Commission (ASC) is a corporate Commonwealth entity within the Australian Government's Department of Health portfolio. It was established in 1985 and operates under the *Australian Sports Commission Act 1989*. The ASC is governed by a board of commissioners appointed by the Minister for Sport. The board determines the ASC's overall direction, decides on allocation of resources and policy for delegated decisions, and is accountable to the Minister for Sport and to Parliament. The ASC is focused on getting more Australians participating and excelling in sport, by delivering key programs in line with the Australian Government's sport policy objectives; providing financial support and other assistance to national sporting organisations to deliver participation and high-performance results and improve their capability, sustainability and effectiveness; and building collaboration, alignment and effectiveness within the Australian sport sector.

1.2 AUSTRALIAN SPORTS ANTI-DOPING AUTHORITY

The Australian Sports Drug Agency (ASDA), launched in 1990, was one of the first anti-doping organisations established in the world. In 2006, ASDA transitioned into the Australian Sports Anti-Doping Authority (ASADA) and is currently Australia's national anti-doping organisation with responsibility for delivering the national anti-doping program consistent with international requirements and Australian legislation. ASADA's primary role is to implement the World Anti-Doping Code (Code) in Australia, protecting the health of athletes

and the integrity of sport. ASADA achieves this through a comprehensive anti-doping program, encompassing engagement, deterrence, detection and enforcement activities.

1.3 NATIONAL INTEGRITY OF SPORT UNIT

The National Integrity of Sport Unit (NISU) was formed in 2012 as a key outcome of the 2011 agreement on the National Policy on Match-Fixing in Sport (National Policy). It provides national oversight, monitoring and coordination of efforts to protect the integrity of sport in Australia from threats of competition manipulation, doping and other forms of corruption.

The NISU is placed within the Department of Health. The national policy responsibility for sport lies with the Minister for Sport, Senator the Hon. Bridget McKenzie.

Within each state and territory there are local bodies tasked with the administration and regulation of sports.

Additionally, there is a comprehensive law-enforcement structure in place, divided between states and territories and the Commonwealth, with a role in dealing with integrity and health and safety issues arising in the sports environment.

Under the responsibility of the Minister for Sport, work is being undertaken to develop a National Sport Plan, which will provide a system-wide examination of sport in Australia to strategically position it into the future. This will be delivered around four key, interrelated pillars of participation, performance, prevention through physical activity, and integrity.

The integrity pillar will support continued vigilance on protecting Australian sport from threats including doping, competition manipulation and illicit drugs.

To develop this pillar, a reference was given to this Review Panel in August 2017.

2. TERMS OF REFERENCE

Under the terms of reference the Review Panel was requested to:

- examine the current national and international sports integrity threat environment and foreseeable future challenges
- examine the adequacy of Australia's current sports integrity capability against this current environment, with particular attention to
 - » the capability of the Australian Sports Anti-Doping Authority and Australia's sport sector to address contemporary doping threats, including the anti-doping rule violation process, and opportunities for improvement
 - » the effectiveness of the 2011 National Policy on Match-Fixing, including consideration of the merits of becoming a signatory to the European Convention on the Manipulation of Sports Competitions (Macolin Convention), and case for national match-fixing laws
- » the merits of establishing a formal national platform for effective, ongoing detection of and response to betting-related sports corruption
- » the merits of establishing a national sports integrity tribunal, as a single independent body to hear anti-doping rule violations and other sports integrity matters
- consider options for structural changes to current sports integrity arrangements, including the merits or otherwise of establishing a dedicated national sports integrity commission or similar entity
- consult widely with stakeholders on the above matters to ensure a comprehensive capture of views and insights to aid the Review
- make recommendations on the above for government consideration.

3. DEFINING SPORTS INTEGRITY

Sports integrity in Australia has been defined by the NISU as:

The manifestation of the ethics and values which promote community confidence in sports, including:

- fair and honest performances and outcomes, unaffected by illegitimate enhancements or external interests
- positive conduct by athletes, administrators, officials, supporters and other stakeholders, on and off the sporting arena, which enhances the reputation and standing of the sporting contest and of sport overall.

For this review, the Panel accepts that this is an appropriate definition. The definition purposely involves a multifaceted concept that is capable of capturing the full range of corrupt activity within sport. A wide definition is required because the threats to sports integrity can be identified across a broad spectrum of activities, ranging from those involving serious and organised crime through to minor issues of ethics and behavioural values. It can impact on all manner of stakeholders and reach almost every aspect of the sporting environment, including the sporting contest itself, the way that athletes are managed and developed within sporting organisations, player transfers, the governance and general management of sporting organisations and clubs, appointment of individuals to governing bodies of sporting organisations,

sponsorship, media, the marketing for sporting events, and the bidding process for the right to host major international tournaments.

In the doping context, those involved in the corrupt activity can include athletes, coaches, trainers, managers, sports scientists, testing officials, suppliers of drugs and methods for administration and detection avoidance.

In the competition manipulation context, those potentially involved include athletes, coaches, support personnel and managers, match officials, wagering service providers and punters.

As discussed later in this report, within each of these domains is the presence of organised crime that has taken advantage of the size and commercialisation of sport, as well as the rapid growth of sports wagering, to use it for its own advantage. This is well illustrated by the emergence, particularly in overseas countries, of competition manipulation including contrived outcomes of events within a competition that have particularly affected football, cricket, tennis and basketball among other sports.

The challenge of doping to sports integrity has been no less serious. Doping, both in the substances and methods used, has evolved significantly from unsophisticated, individual use to highly organised and systemic practices, at times to the point of being institutionalised by state agencies.

4. WHY DOES INTEGRITY IN SPORT MATTER?

Sport is an intrinsic part of the Australian way of life. One of the most united, strong and successful multicultural nations in the world, sport brings people together in Australia, transcending differences in language, culture and beliefs, and bringing with it so many physical, health, social and economic benefits.

The imperative of preserving its integrity has been acknowledged by leading sports administrators nationally and internationally. For example, in relation to competition manipulation, sport leaders have been at one in citing the threat posed:

‘The legitimate sports gambling industry is built on a foundation of confidence in the integrity of sport. If that confidence is shaken, the entire industry is threatened.’³

...

‘Cheating driven by betting is undoubtedly the biggest threat to sport after doping.’⁴

— Eighth President IOC, Jacques Rogge

‘Sport will lose its significance if match-fixing robs it of core values which makes it so popular and unique. It turns sport into an economic plaything.’⁵

— former United Nations Special Adviser on Sport for Development and Peace, Wilfried Lemke

Australia has a passionate sports journalism profession, and integrity concerns attract intensive and widespread media attention, and generate much public commentary. The Victorian Premier League competition manipulation case and Cronulla Sharks Rugby League Club and Essendon Football Club doping matters in particular attracted intensive sports press attention, as did the National Rugby League Ryan Tandy case.

As a result, there has been ongoing public questioning of the adequacy of existing safeguards for Australian sport, although the understanding of

current integrity settings, and often the resulting commentary, has not always been well informed.

In Australia, recent surveys⁶ have indicated that while a clear majority of respondents agreed or strongly agreed that Australia is respected on the international sporting stage (75%), this majority narrowed when asked whether Australia’s high-performance athletes were positive role models (62%), and whether elite/high-performance sport in Australia has high integrity (60%). Internationally, a recent survey conducted by United Kingdom Anti-Doping (UKAD), the UK equivalent to Australia’s ASADA, demonstrated that the confidence of the UK public in sport is declining too, with 48% of British adults saying that high-profile stories on doping in sport make them think that doping is widespread.⁷

Illustrating the variety of ways that integrity threats can manifest, Transparency International in its 2016 ‘Global Corruption Report: Sport’, noted the breadth of non-doping threats to sports integrity:

‘Referees and athletes can take bribes to fix matches. Club owners can demand kickbacks for player transfers. Companies and governments can rig bids for construction contracts. Organised crime is behind many of the betting scandals that have dented sport’s reputation. And money laundering is widespread. This can take place through sponsorship and advertising arrangements. Or it may be through the purchase of clubs, players and image rights. Complex techniques are used to launder money through football and other sports. These include cross-border transfers, tax havens and front companies.’⁸

3 International Olympic Committee, ‘IOC President open historic meeting on irregular and illegal sport betting’ 1 March 2011, <<https://www.olympic.org/news/ioc-president-opens-historic-meeting-on-irregular-and-illegal-sport-betting>>.

4 International Olympic Committee, ‘IOC: Betting biggest threat to sport after doping’ 24 June 2010, <http://www.tioc.org/index.php?option=com_content&view=article&id=185:iocbetting-biggest-threat-to-sport-after-doping&catid=2:latest-news&Itemid=233>.

5 FIFA, ‘Zero tolerance for match-fixing’, 25 March 2011, <<http://www.fifa.com/governance/news/y=2011/m=3/news=zero-tolerance-for-match-fixing-1406029.html>>.

6 ASC Community Perceptions Survey 2017 conducted by Essence Communications as part of the National Sport Plan.

7 UKAD, ‘UKAD issues urgent wake-up call as doping stories hit public trust in the integrity of sport’, 9 July 2017, <<https://ukad.org.uk/news/article/ukad-issues-urgent-wake-up-call-as-doping-stories-hit-public-trust-in-the-i->>.

8 Transparency International, ‘Sport’, accessed 2 January 2018, <<https://www.transparency.org/topic/detail/sport>>.

This can lead to reduced participation and an erosion of performance standards, particularly where concerns persist in relation to the penetration of organised crime.

What can also be lost is the ability to use the opportunities offered by the growing sports wagering market for stimulating interest in sport, and opening new sources of revenue for government and sporting organisations. Repeated scandals will make close ties between government and sports and WSPs ethically and politically unpalatable, making it imperative to ensure that integrity settings are in place and are right.

Competition manipulation scandals that mar the image of a sport can lead to the disbanding of teams and plummeting attendance rates, as was seen in the case of the match-fixing that permeated the Taiwan Professional Baseball League in the mid-1990s.⁹

There is a body of evidence that use of performance enhancing drugs is also seen by the public as a serious threat to sport that damages its reputation.¹⁰ This has been seen to have a negative impact on television audiences,¹¹ on sponsorship¹² and on audience attendance.¹³

Similarly to competition manipulation, concerns that performance-enhancing drug use may be necessary to remain competitive can be a deterrent to participation, particularly at the elite and subelite levels. This has been recognised by ASADA, which has observed:

Doping in elite sport, and in particular, sophisticated, orchestrated and deliberate doping, has received significant media coverage in recent years. The ensuing public debate has raised the issue of the negative effects of ongoing incidents of high-profile doping on public confidence in the integrity of sport, and even on future rates of participation in competitive sport. Widespread corruption and sometimes poor governance within global sport and high-profile governing bodies has also served to exacerbate poor public perceptions of sport.¹⁴

and that:

Doping in sport has arguably never been more topical than it is now, and the past five years have seen landmark revelations of doping ... It seems clear that the use of performance and image enhancing drugs (PIEDS) is widespread, and is more sophisticated and harder to detect than at any other time in history.¹⁵

The involvement of organised crime in the supply of banned drugs and PIEDs, as well as illicit drugs, with the potential for bribery to secure recruitment into competition manipulation, and other corrupt activities, is no less real in this context.

The challenge that is posed to sports integrity generally stems from the fact that criminal activity in sport crosses national and international boundaries, generating massive profits which are then channelled into other criminal activities. Competition manipulation and illegal wagering in particular are global challenges, with online gambling networks making it possible to place wagers on almost any sporting competition, no matter where located, at any level, and at any time of the day. This can support money laundering, facilitate drug supply and provide an opportunity for complete anonymity for those using the dark net, encryption and blockchain technologies, or various levels of commissioned agent networks.

Beyond the immediate impact of corrupt conduct of the kind identified, a public loss of confidence in the sporting contest has direct consequences for the health, economic, social and cultural benefits that sport generates, and undermines significant Government investment in sport (more than AU\$300 million in 2016–17). In the gambling sphere, resort to wagering on sports with unregulated and unlicensed wagering service providers offshore results in the loss of revenue for state/territory governments and the Australian Government from income tax and licensing fees, as well as the loss to SCBs of the product fees that are payable when bets are placed with licensed WSPs.

9 Jennings, R, 'Baseball was nearly dead in Taiwan after a major cheating scandal. Here's how it made a comeback', *Los Angeles Times*, 18 October 2016, <<http://www.latimes.com/world/asia/la-fg-taiwan-baseball-snap-story.html>>.
 10 Harry Arne Solberg, Dag Vidar Hanstad and Thor Atle Thøring 2010, 'Doping in elite sport—do the fans care?: public opinion on the consequences of doping scandals', *International Journal of Sports Marketing & Sponsorship*.
 11 Van Reeth, D, 2013, 'TV demand for the Tour de France: The importance of stage characteristics versus outcome uncertainty, patriotism, and doping', *International Journal of Sport Finance*.
 12 Buechel, B, Emrich, E & Pohlkamp, S, 2014, 'Nobody's innocent: The role of customers in the doping dilemma', *Journal of Sports Economics*.
 13 Cisyk, J & Courty P, 2015, 'Do fans care about compliance to doping regulations in sports? The Impact of PED suspension in baseball', *Journal of Sports Economics*.
 14 Australian Sports Anti-Doping Authority, Submission 10.
 15 Ibid.

What has become apparent, despite the extensive efforts and initiatives that have been taken overseas and within Australia, is that a cohesive and coordinated global response has been lacking.

In summary, the potential consequences of a loss of public confidence in sports integrity because of competition manipulation and doping are profound.

At a national level, the establishment of the National Policy and the National Anti-Doping Scheme (NAD Scheme), and the extensive work that has been done to implement these policies, have been valuable initiatives.

The work done so far has earned Australia the reputation internationally as a strong advocate for effective integrity protections. However, as noted in this report, considerable challenges remain in the detection and response to doping and competition manipulation. The current structure has led to a fragmented approach, and to issues concerning the flow of information and intelligence that is critical for an effective response.

The purpose of this report is to resolve the issues that arise to bring about a more coordinated, consistent and optimal outcome that will preserve Australia's reputation as a leader in this field.

5. CONDUCT OF THE REVIEW

On 5 August 2017, the then Minister for Sport, the Hon. Greg Hunt MP, announced a review of Australia's Sports Integrity Arrangements as part of the National Sport Plan. We were appointed to undertake the Review and provide recommendations.

The Panel, appointed by Minister Hunt, consisted of Mr James Wood AO QC (Chair), Mr David Howman CNZM and Mr Ray Murrhly.

In conducting the Review, the Panel was supported by adjunct panel members the Hon. Dr Annabelle Bennett AO SC and Ms Jo Setright. The adjunct panel members assisted through ongoing liaison with their nominated stakeholders, and by delivering consolidated advice on integrity issues from the perspective of the COMPPS and medal sports sectors. They did not, however, participate in writing the report, or in formulating the findings and recommendations it contains. Thus, the adjunct panel members maintained their independence from the core Panel members who authored the report.

We examined the current national and international sports integrity threat environment and the adequacy of Australia's sports integrity capabilities. We also examined the implications of current and foreseeable future threats to Australian sports integrity, including the rise of illegal offshore wagering, competition manipulation and doping in sport. It was outside the terms of reference and resources of the Review to investigate any specific cases of doping, competition manipulation or other specific instances where particular claims may have been made relating to sports integrity issues.

The terms of reference do not extend to racing in its various forms; therefore, we have not investigated the racing aspects of wagering and we do not

propose that our recommendations have any impact in that area.

Consistent with the terms of reference, we consulted with a wide range of sports integrity stakeholders within Australia and internationally, received submissions from members of the public directly and via the broader National Sport Plan consultation process, and conducted an extensive literature review.

Submissions from stakeholders were sought via Minister Hunt's media release of 5 August 2017, which included the terms of reference for the Review. Letters inviting a submission were also sent directly to key stakeholders including the sport sector, law-enforcement agencies, ASADA, ASC, state and territory gambling regulators, other domestic and international government departments and members of the public. Through this process we received and reviewed submissions from 33 stakeholders, with some stakeholders providing multiple submissions.

We also conducted an extensive, targeted stakeholder engagement process in the form of face-to-face interviews and conference calls. Similarly to the call for submissions, letters inviting attendance for an interview were sent directly to key stakeholders. Through this process we consulted more than 40 stakeholders.

A list of submissions we received and stakeholders we consulted is outlined on pages 21–22.

6. REPORT STRUCTURE

After extensive consultation and consideration of national and international developments, the Review has identified a number of potential integrity threats and weaknesses that need to be addressed. These are considered in the following chapters which contain recommendations for appropriate responses including, in particular, strategies to secure a coordinated national approach.

Chapter 2 contains an assessment of the current national and international sports integrity threat environment from match-fixing and doping.

In Chapter 3, we identify the responses to the match-fixing threat that we consider necessary.

In Chapter 4, we deal with several issues about the doping threat, and the current weaknesses that we have identified in the process for detection of and sanctioning for ADRVs.

In Chapter 5, we discuss and make recommendations for the creation of a NST.

In Chapter 6, we identify the need for a National Platform, and propose the creation of a NSIC.

Considerable background material is provided through annexures dealing with betting on Australian sport (Annexure A), the Anti-Doping Framework (Annexure B) and Sports Tribunals (Annexure C).

CHAPTER

2

THE CURRENT NATIONAL AND INTERNATIONAL SPORTS INTEGRITY THREAT ENVIRONMENT AND FORESEEABLE FUTURE CHALLENGES

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I. INTRODUCTION

Corruption in sport is not a new phenomenon – proof of competition manipulation has been discovered¹⁶ as far back as AD 267.

But while cheating has always been a feature of sporting competition, the nature of sports corruption is evolving at a faster rate than ever before due to the immense commercialisation of sport and sporting organisations, accelerating technological advancement, globalisation of online wagering and involvement of organised crime. As stated by INTERPOL¹⁷:

Crimes in sport cross international borders and generate huge profits which are then channelled into other illegal activities. Estimates of the money made through illegal betting alone run into hundreds of millions of euros annually.

It is clear that the integrity of global sport has become a dominating theme in world sport

in recent years with successive revelations of systematic competition manipulation, doping, illicit drug use, corruption scandals and other compromises placing at risk public confidence in sports at all levels. Sports integrity matters are now complex, globalised, connected, and beyond the control of any single stakeholder. Together they form a complicated threat matrix, exposing vulnerabilities that require a sophisticated and coordinated response across sports, governments, regulators, the wagering industry, law enforcement and other stakeholders.

In this chapter, we identify the nature and extent of the risk and what it means to the preservation of an integrity-based sporting environment in Australia.

16 Urbanis, J, 'Taking a Dive', Archaeological Institute of America, 9 June 2014, <<https://www.archaeology.org/issues/139-1407/trenches/2178-oxyrhynchus-papyrus-wrestling-contract>>.

17 INTERPOL, 'Integrity in Sport', <<https://www.interpol.int/Crime-areas/Crimes-in-sport/Integrity-in-sport>>, accessed 14 December 2017.

2. KEY FINDINGS

1. Australian and international sport continues to be challenged by a wide range of integrity threats.
2. The sports integrity threat environment, particularly with respect to the links between organised crime and sports wagering, is evolving quickly, and risks will grow as the sports wagering market continues to develop in size and sophistication. Online offshore wagering providers are of particular concern.
3. Organised crime is also involved in the importation and distribution of substances prohibited from sport under the Code, and the importation and distribution of illicit substances including to athletes.
4. Australia has been proactive in addressing threats to sports integrity and is viewed as a leading sports integrity nation. However, the evolving sophistication of the threats to sports integrity requires ongoing vigilance to ensure Australian sport is adequately protected.
5. Australia's threat response framework will need to be innovative and agile to adapt as threats develop, requiring at the heart of the framework an effective and coordinated national capability.
6. Threats to sports integrity in Australia are not limited to doping and competition manipulation. Equally important is the ability of governments and the sport sector to adequately respond to other integrity issues in the sporting sphere including: harassment, bullying and discrimination; child protection; health and safety issues; accreditation of athlete support personnel; regulation and supply of performance and image enhancing drugs, including in sporting and dietary supplements; gender issues; and corruption of new and emerging sports without identifiable controlling bodies (for instance, e-sports).

3. DEFINITION OF SPORTS INTEGRITY

For the purposes of the Review, we have adopted the definition of 'sports integrity' developed by the NISU referred to in Chapter 1.

This definition appropriately captures a wide range of behaviours including criminal offences relating to competition manipulation; the supply and use of substances prohibited from sport; breaches of codes of conduct; and participant welfare, protection and discrimination issues.

It also recognises that misconduct of various kinds by those associated with sport may undermine community confidence in the sector, which may ultimately affect participation rates and high-performance candidate pools. Such misconduct, which often attracts substantial media exposure, may also have severe reputational, commercial and other repercussions for individuals and sporting bodies.

4. THE SPORTS INTEGRITY THREAT ENVIRONMENT – GENERAL

Threats to sports integrity, taken collectively, may be represented as existing on an interconnected continuum (Figure 1 below). Therefore, any response relies on effective coordination across a diverse stakeholder group for effective integrity protections to be provided.

4.1 THREAT ASSESSMENT

Understanding the nature and detail of a sports integrity threat environment of accelerating complexity and sophistication is a relatively new and challenging task. Threats to sports integrity potentially require assessment and response by separate bodies as illustrated by the following figure.

Figure 1: Continuum of Sports Integrity Threats

CONTINUUM OF SPORTS INTEGRITY THREATS



CURRENT BODIES WITH RESPONSIBILITY FOR ASPECTS OF SPORTS INTEGRITY



In the absence of a dedicated, ongoing monitoring and reaction capacity, threat awareness, mitigation and regulatory responses can quickly become redundant or ineffective.

This has been recognised in Australia and has led to sports adopting anti-doping and anti-match-fixing codes, among others, and in some cases, establishing internal integrity units and tribunals to deal with breaches. A spreadsheet showing how COMPPS sports have adopted such codes and integrity structures is contained in Attachment 2.

Additionally, over the last four years, the NISU in cooperation with the ACIC, and working closely with NSOs and other integrity partners, has developed an understanding of the threats to and vulnerabilities of individual Australian sports. This has been achieved through drawing on law

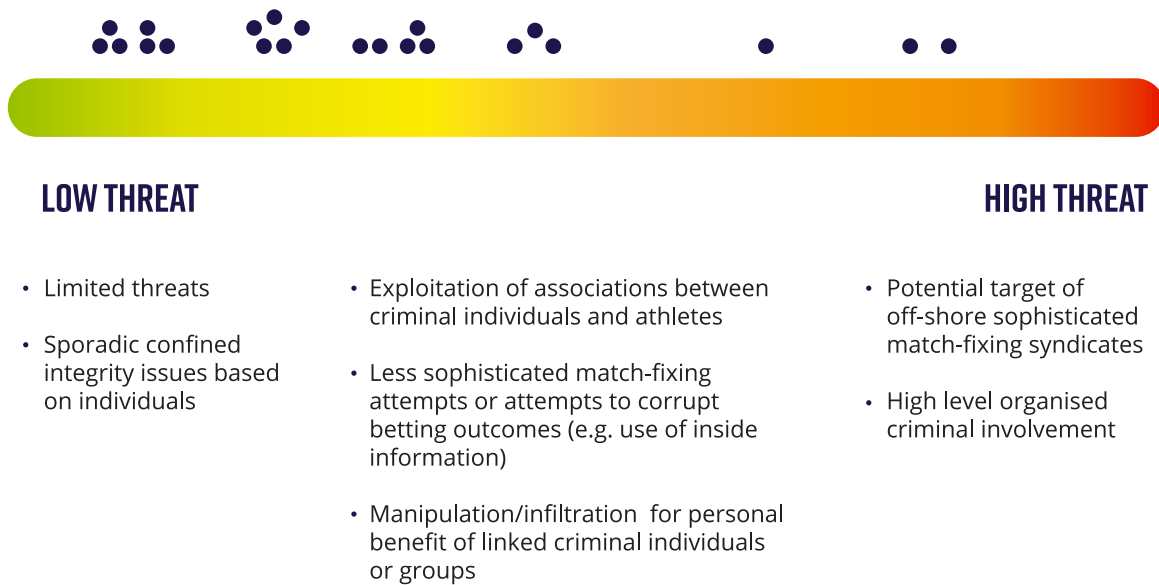
enforcement and national threat assessment expertise and methodologies, with input from the wagering industry, sports fraud detection services and other relevant sources, to provide a detailed threat and vulnerability assessment.

The underpinning mechanism, known as the Sports Integrity Threat Assessment Methodology (SITAM), is a quantitative and qualitative instrument which provides a threat profile for individual sports and informs tailored mitigation strategies. It also allows a national perspective and strategic understanding of the threats and vulnerabilities across Australian sport, allowing an informed approach to sports integrity policy development.

By way of illustration, Figure 2 illustrates the spread of SITAM overall ratings for 22 individual Australian NSOs (each dot representing a sport).

Figure 2: The spread of SITAM overall ratings for 22 individual Australian NSOs

AUSTRALIAN SPORT INTEGRITY THREAT ASSESSMENT: OVERALL RATINGS



The following case study gives an example of how the SITAM outcomes can be used to develop a suitable integrity framework for an individual sport.

CASE STUDY – BASKETBALL AUSTRALIA

Following a confidential SITAM assessment in 2014 which identified specific vulnerabilities for basketball in Australia, particularly in relation to the wagering liquidity and location of offshore wagering markets on Australian basketball competitions, Basketball Australia, the NISU and ASC collaborated to completely revamp Basketball Australia's integrity frameworks. The resulting product provides a world-leading template of integrity response available for application to other sports and jurisdictions.

As part of efforts to support integrity measures in Australian sports, the NISU provides sports integrity templates for sports to implement and adapt as required. An example of such templates are provided at Attachment 1.

The SITAM has generated interest from overseas governments and sports integrity agencies, with SITAM equivalents being trialled in at least one overseas national sporting landscape. It is a process that we consider should be a permanent part of the response in Australia to sports integrity challenges.

The level of threat, which it measures for individual sports, involves a rating across all sports integrity threat types, including doping and match-fixing, illicit drug use, susceptibility to infiltration by organised crime, and governance and oversight vulnerabilities.

While recognising the importance of the full spectrum of sports integrity threats and responsibilities, and without diminishing any single element, the manipulation of sporting competitions (match-fixing) and doping remain two leading threats to the integrity of the sports sector.

4.2 MANIPULATION OF SPORTS COMPETITIONS

The manipulation of sporting competitions – often categorised as ‘cheating to lose’ – is primarily manifested as wagering-related match-fixing, where those with a capacity to influence the outcome of an event or a feature within it contrive to do so as to achieve to profit from a wager or some other pecuniary benefit. It is no less a threat to sports integrity than doping.

4.3 DOPING

Doping – often categorised as ‘cheating to win’ – is the deliberate or inadvertent use by an athlete of a substance or method prohibited from sport.

Doping continues to be a pronounced threat to the credibility of sport. Investigations commissioned by the World Anti-Doping Agency (WADA) as outlined in the reports by Professor McLaren uncovered a systematic and sophisticated regime of doping and manipulation of test results in Russia between 2011 and 2015 involving more than 1,000 Russian athletes across 30 sports, government figures and the Russian Federal Security Bureau (FSB), which affected a number of international events, particularly the 2014 Sochi Winter Olympic Games. Other iconic sporting events, such as the Tour de France, have been beset by doping scandals.

According to WADA, in global sport in 2015:

- 1,929 ADRVs were recorded
- 122 nationalities were represented (including Australia)
- 85 sports were affected.¹⁸

In 2016–17, ASADA reported 34 sanctions across 13 sports. There are currently 48 Australian athletes and support people from a variety of sports under sanction, serving bans and suspensions for various periods.¹⁹

18 World Anti-Doping Agency, '2015 Anti-Doping Rule Violations (ADRVs) Report', 3 April 2017, <<https://www.wada-ama.org/en/media/news/2017-04/wada-publishes-2015-anti-doping-rule-violations-report>>.

19 Australian Sports Anti-Doping Authority, *Sanctions*, 25 November 2017, Sanctions – Violation List <<https://www.asada.gov.au/sanctions>>.

5. MANIPULATION OF SPORTS COMPETITIONS

5.1 WHAT IS THE MANIPULATION OF SPORTS COMPETITIONS?

Competition manipulation, commonly referred to as match-fixing, can take various forms. The Australian National Policy on Match-Fixing in Sport (National Policy) states:

'Match-fixing involves the manipulation of an outcome or contingency by competitors, teams, sports agents, support staff, referees and officials and venue staff. Such conduct includes:

- the deliberate fixing of the result of a contest, or of an occurrence within the contest, or of a points spread
- deliberate underperformance
- withdrawal (tanking)
- an official's deliberate misapplication of the rules of the contest
- interference with the play or playing surfaces by venue staff
- abuse of insider information to support a bet placed by any of the above or placed by a gambler who has recruited such people to manipulate and outcome or contingency.²⁰

The Council of Europe Convention on the Manipulation of Sports Competitions (2014)²¹ (Macolin Convention) defines the manipulation of sport as:

An intentional arrangement, act or omission aimed at an improper alteration of the result or the course of a sports competition in order to remove all or part of the unpredictable nature of the aforementioned sports competition with a view to obtaining an undue advantage for oneself or for others.

Generally, there are two key motives driving competition manipulation:

- wagering-related corruption, where a sporting competition is manipulated to secure a pecuniary benefit from a WSP or other party
- non-wagering-related manipulation, which might involve accessing prize money, ranking and draw manipulation, favourable drafting outcomes, championship or qualifying points, official bias or favouritism, or other motivations.

The two types are often differentiated on the basis of the criminality associated with a corrupted wagering outcome.

Within these categories there are different types of 'fix'. The two main examples are:

- manipulating the overall outcome of a match
- manipulating an 'event' within a match (also known as a 'spot-fix'), for instance, winner of the first set in a tennis match.

These types of fix are often referred to separately as 'match-fixing' and 'spot-fixing', respectively; however, throughout this report, unless indicated otherwise, the term 'competition manipulation' will refer to both.

The distinction between a match-fix and spot-fix can have a significant influence on the risk-reward profile of the corrupting conduct. While spot-fixing may be easier to execute, more difficult to detect, and still allow a winning overall outcome, it is likely to generate lower profit on wagering markets.

Competition manipulation may involve any party with the ability to influence the outcome or an incident within a sporting event, including athletes, match officials, ground and stadium staff, and others, limited only to the imagination of those involved and availability of manipulation opportunities.

5.2 SPOT WAGERING

The contemporary wagering market provides for a wide range of spot wagering (also known as 'exotic' or 'proposition' (or 'prop') betting) opportunities for many Australian sports.

A proliferation of spot-wagering opportunities may increase the susceptibility of an event to manipulation. For these reasons, strong policies and practices must be in place to ensure that the risk associated with the existence of spot wagers in markets is acceptable, and that interventions are available and exercised where necessary.

5.3 INSIDE INFORMATION

Any athlete or individual connected to a player or team who possesses privileged information is in a position to use that information for their own advantage in a wagering market or for the advantage of anyone to whom it is passed. The procurement of inside information is also

20 Sport and Recreations Ministers' Council, 'National Policy on Match-Fixing in Sport' (as agreed 10 June 2011).

21 Council of Europe Convention on the Manipulation of Sports Competitions, opened for signature 18 September 2014, CETS No. 215.

a common method of 'grooming' athletes and support people by organised crime on the way to their involvement in the more serious competition manipulation offences.

Sports recognise the existence of such risks:

The [COMPPS] Sports acknowledge that match fixing and betting-related corruption are major threats to the integrity of their sports and perceptions about the integrity of their sports.²²

5.4 COURT-SIDING AND DATACASTING

Court-siding (also known as pitch-siding) is the practice of the instant, covert transmission of information about developments in a given sports event to allow a wagerer to take advantage of the brief delay between play and broadcast to place a wager on a known outcome in the course of a contest (either a win or some intermediate event).

The response to court-siding to date has largely depended on enforcement by venue operators of entry conditions which permit the exclusion of spectators who do not have the necessary permission to engage in the practice. At this stage, we do not see any need for legislative intervention to outlaw the practice but it is something that the proposed NSIC could monitor.

Court-siding should not be confused with legitimate datacasting services, which are an increasingly routine and authorised feature of sporting events that are employed to feed data to licensed WSPs, often as part of a commercial arrangement with the SCB. Despite the authorised nature of such datacasting services in most cases, datacasting is a factor in the broader sports integrity landscape insofar as such services augment the ability to wager on Australian sporting events globally, almost in real time. It remains incumbent on SCBs, WSPs, gambling regulators and the proposed NSIC, to monitor the risks associated with datacasting, and to respond where necessary.

5.5 IMPACT OF SPORTS WAGERING

The huge growth in sports wagering globally, particularly in Asia, has created a low-risk, high-profit environment for exploitation including by organised crime, resulting in fixing scandals across the globe affecting numerous sports.

While there is no definitive estimate of the prevalence of competition manipulation, one estimate by a leading sports bet monitoring and fraud detection company²³ suggests that in one global sport, over the course of a defined period, one game in 100 was suspected to be manipulated.²⁴ Since the start of the 2008–09 financial year this company has escalated 3,284 instances of matches that were likely to have been manipulated based on anomalous betting patterns, and noted that its fraud detection service had resulted in 207 sport disciplinary sanctions and 24 criminal convictions worldwide.

The growing accessibility and popularity of global online wagering platforms has given rise to a significant level of complexity in the ability to establish effective regulatory measures, and in the policing and prosecution of competition manipulation offences. These challenges show little sign of abating, with newer blockchain technologies supporting the development of decentralised wagering market platforms that are virtually beyond regulation, which can be used for match-fixing related wagering and which provide anonymity.

A wager on an Australian sporting event can now be placed from virtually any location in the world. Similarly, a person in Australia can place a wager on a sporting event in Australia or overseas with a WSP located in any state or territory, or offshore. This globalisation of the wagering market has made information sharing and intelligence gathering even more complex than previously.

Betting exchanges are also a feature of contemporary wagering markets, and involve a wagerer backing an option online at given odds, which is then matched ('laid') by another wagerer, with the WSP taking a small commission.

Offshore unregulated providers can be used for very large wagers that licensed WSPs are unwilling to accept, and are also able to offer a more attractive product – higher payout ratios, and a significantly larger number and variety of markets (including those unavailable through Australian licensed WSPs).²⁵

²² Coalition of Major Professional and Participation Sports, *Submission 20*.

²³ Sportradar is a fraud detection company that provides bet monitoring, intelligence, investigation and fraud prevention services to its partners on a contractual basis. A number of Australian sports, law-enforcement and government agencies have engaged Sportradar's services, including the AFL, NRL, Cricket Australia, the National Integrity of Sports Unit and the Australian Federal Police.

²⁴ Cook, D, 'Fixers beware', *Gambling Insider*, 12 January 2016, <<https://www.gamblinginsider.com/in-depth/1667/fixers-beware>>. See also, 'Fixing the Fixers', *The Economist*, 23 September 2017, 12.

²⁵ Australian Criminal Intelligence Commission, *Submission 28*

As noted by ACIC in its submission, there is a significant international element in sports wagering:

Australian gamblers now have an unlimited choice of bookmakers and are betting on sport and racing events with bookmakers around the world including in Russia, Costa Rica, Vanuatu, Curacao (Dutch Antilles), and Cagayan in the Philippines. In some cases the actual country where the bookmaker is based cannot be determined. Wagering on sport and racing, like many other industries and service, is now a borderless world and increasingly unregulated.²⁶

The compatibility of some Australian sports events with prime viewing time makes the associated markets favoured by wagerers in Asia, leaving them vulnerable to corruption.

CASE STUDIES – THE CROSS-BORDER NATURE OF MATCH-FIXING AND RELATED CORRUPTION

Match-fixing in the Victorian Premier League – Southern Stars

The transnational character of corruption of sport was evidenced by Southern Stars' case. The Southern Stars Football Club in the Victorian Premier League was at the centre of a competition manipulation consortium involving players imported from the United Kingdom, Australian support staff, and an international criminal syndicate based in Singapore and Hungary.

Bochum – competition manipulation in European Football

The Bochum case exemplifies the complexity and globalisation of wagering-related competition manipulation.

The prosecutorial office in Bochum, Germany, identified a competition manipulation syndicate which involved 320 fixed football matches in 13 countries, of which several were European countries, including Belgium, Germany and Switzerland.

Wagers in tens of millions of euros were placed, including €32.4 million with a single Asia based operator licensed in the United Kingdom.

International cross-border complexities arise in relation to wagering on sport, given variations of regulatory and investigatory capacity response in different nations that may be the destination of concurrent wagers in the event, for example, that wagerers complicit in fixing activities attempt to spread their risk. Similar concerns apply to the current Australian regulatory environment, where the complexities of domestic cross-border corruption are compounded by the involvement of eight possible jurisdictions, the absence of central coordination or responsibility, and by the onshore/offshore dichotomy.

5.6 THE MODERN SPORTS WAGERING MARKETS – ITS GROWTH, COMPLEXITY AND SOPHISTICATION

Characteristics of the modern wagering market include its significant liquidity, accelerated market growth, market complexity, increasing accessibility of online platforms and offshore unregulated markets.

MARKET SIZE

A key feature of the global sport and racing wagering market is the amount of money which moves into and through the industry. It is estimated that, in 2017, global turnover on all racing²⁷ codes will be US\$179 billion, and turnover on all sports US\$202 billion.²⁸

This is dwarfed by the US\$500 billion to US\$1 trillion²⁹ estimated to move through the unregulated market. Some estimates reach up to US\$2 trillion³⁰ – though a definitive estimate of the illegal market remains elusive. Much of this estimated turnover is subject to unregulated markets.

The estimated turnover for all regulated gambling in Australia in 2015–16 was AU\$204.4 billion. Of this AU\$28.1 billion was gambled in the sport and racing market with the remaining AU\$176.3 billion gambled in the gaming sector.³¹ See Appendix A for more information on wagering on Australian sport.

²⁶ Ibid

²⁷ For the purposes of this assessment, the term 'racing' is used to refer to thoroughbred, standard bred (harness) and greyhound racing (U).

²⁸ Engelbrecht-Bresges, 'The Wagering Landscape: Industry Trends and Strategies', *Proceedings of the 36th Asian Racing Conference*, 24–29 January 2016, Mumbai, India.

²⁹ Australian Criminal Intelligence Commission, *Submission 28*.

³⁰ 'Fixing the Fixers', *The Economist*, 23 September 2017, 12.

³¹ Queensland, 'Australian Gambling Statistics', 33rd edition, Queensland Government Statistician's Office, 2017.

MARKET ACCESSIBILITY AND COMPLEXITY

Technology is revolutionising the wagering industry, with wagering markets on sport and racing never more varied or accessible. Whereas bookmaking was once a localised industry with limited available markets dominated by retail and on-course wagering, the shift to online platforms, both onshore and offshore, has provided global access to thousands of wagering markets on a vast array of sport and racing events, 24 hours a day, seven days a week.³²

According to global gambling research company H2GC, interactive gambling is growing at eight times the rate of the land-based sector, and shows no indication of abating.³³

This globalisation of wagering markets has significantly reduced the capacity of governments to regulate and restrict access to unauthorised WSPs through domestic licensing and regulatory arrangements.³⁴ With greater volume of wagering, whether onshore or offshore, comes greater opportunity for corruption.³⁵ The ACIC noted:

The increasing number of online bookmakers, who are at best subject to minimal oversight and regulation, has created multiple criminal opportunities to corrupt betting outcomes.

OFFSHORE WAGERING PLATFORMS

The Australian Communications and Media Authority (ACMA) – the Australian Government agency responsible for regulating online gambling through administering the *Interactive Gambling Act 2001* – submitted³⁶ that, as a conservative estimate, about 600 online platforms offer gambling services to Australians residents, with transactions in Australian currency. Without filtering for Australian currency, this increases to more than 2,000 platforms.

In the context of the high and growing liquidity of the sports wagering market, Table 1 outlines onshore and offshore betting turnover on selected Australian sports, and illustrates the variability in the amount of money wagered on sports, and the location of bookmakers who take those bets.

Table 1: Estimated Turnover by Regulated Bookmakers Offering Markets Australian Sports 2016

	Domestic (per regular season)	Asia (per regular season)	Rest of World (per regular season)	Total
Sport 1	\$1.30 billion	\$82.00 million	\$248 million	\$1.66 billion
Sport 2	\$131.00 million	\$1.05 billion	\$131 million	\$1.31 billion
Sport 3	\$1.10 billion	\$73.00 million	\$291.00 million	\$1.46 billion
Sport 4	\$8.00 million	\$27.00 million	\$0.90 million	\$36.00 million
Competition 1	\$784.00 million	\$56.00 million	\$280.00 million	\$1.12 billion

Source: Sportradar. Estimates only include regulated and partially regulated bookmakers.

While money placed with domestic-regulated wagering service providers can be accessed and scrutinised by Australian sports and law-enforcement agencies, should there be any integrity concerns, customer details, wagering transaction data and other important wagering data relating to bets placed with unregulated overseas WSPs is inaccessible.

Almost 80% of the global sports wagering market is estimated to move through online offshore wagering platforms,³⁷ and according to ACIC:

Domestic links to these offshore betting markets are well established and strengthening. Offshore bookmaking platforms are easily accessible, provide high levels of customer anonymity, a wide range of bet types and facilitate movement of large amounts of money.³⁸

As noted in the O’Farrell Review, an accurate estimate of the offshore unregulated wagering market is elusive. In our view, the potential for a greater shift to the unregulated market is not only possible but likely.

32 Australian Criminal Intelligence Commission, *Submission 28*.
 33 Department of Social Services, ‘Review of Illegal Offshore Wagering’ (lead reviewer, the Hon. Barry O’Farrell), 18 December 2015.
 34 Andreff W, Complexity Triggered by Economic Globalisation—The Issue of On-Line Betting-Related Match Fixing, 2017, 5 *Systems* 12.
 35 Ibid.
 36 Review Panel consultations with ACMA on 23 August 2017.
 37 ICSS estimate from 2014 cited in the Australian Wagering Council’s submission to the Review of the Impact of Illegal Offshore Wagering.
 38 Australian Criminal Intelligence Commission, *Submission 28*.

A shared and consistent view expressed during the Review was that offshore wagering platforms have a number of competitive advantages over local WSPs, including that they:

- do not pay licence fees in Australia or Australian tax or product fees, and can therefore offer better odds and wider markets.
- accept online, in-play wagers which are not available to Australian WSPs, providing a gateway for a wide array of spot wagers that can give rise to in-play manipulation vulnerability.
- offer anonymity, including through the ability to place wagers with agents and subagents.
- provide services to wagerers in Australia who have either had accounts with licensed Australian service providers suspended or cancelled or subjected to limits.

Both Tabcorp and Responsible Wagering Australia (RWA)³⁹ submitted that the illegal offshore online wagering industry is of serious concern.⁴⁰ RWA submitted:

In our view, the biggest threat to sports integrity in Australia remains the illegal offshore wagering industry, and subsequently, the necessity for Australian licensed wagering providers to remain competitive with the offshore industry

...

Unlike licensed Australian operators, the illegal offshore wagering industry presents a number of threats to the integrity of Australian sport, including:

- unlike Australian licensed operators, illegal offshore operators do not have information sharing agreements with sports controlling bodies to assist in the detection of suspicious betting activity

- illegal offshore operators do not pay product fees to sporting bodies, reducing the level of funding available to be invested in integrity-related staff, programs and training
- illegal offshore operators offer markets and bet types that are banned in Australia, are not approved by Australian sporting bodies and pose a significant integrity risk
- illegal offshore operators have potential links to criminal networks, increasing the likelihood of corruption and money laundering.

5.7 INVOLVEMENT OF CRIMINAL GROUPS AND INDIVIDUALS IN WAGERING

It is now broadly accepted that corruption by organised criminal individuals and groups represents perhaps the most significant threat to the integrity of sport at a global level.

The involvement of criminal groups in corrupting sport and in the provision of illegal gambling and wagering services is not a new experience. However, the current availability of a global customer base and the anonymity provided through online wagering platforms, particularly in jurisdictions where regulation and oversight are minimal or absent, is a matter for serious concern.

As noted in a UNODC-IOC paper in 2013:⁴¹

'The phenomenon of match-fixing brings to the surface its links to other criminal activities such as corruption, organised crime and money-laundering. Recent cases reveal the magnitude of the problem and indicate the dire need to address it through appropriate investigative and law enforcement tools.'

As outlined in the IOC/INTERPOL *Handbook on Protecting Sport from Competition Manipulation*:⁴²

39 A peak body representing several 'corporate' wagering service providers including Betfair, Bet365 CrownBet, Labrokes, Sportsbet and Unibet.

40 Tabcorp, *Submission 29*; and Responsible Wagering Australia, *Submission 22* (National Sport Plan).

41 United Nations Office on Drugs and Crime, 'Criminalization approaches to combat match-fixing and illegal/irregular betting: a global perspective', July 2013, 16, <[www.unodc.org/documents/corruption/Publications/2013/Criminalization approaches to combat match-fixing.pdf](http://www.unodc.org/documents/corruption/Publications/2013/Criminalization%20approaches%20to%20combat%20match-fixing.pdf)>.

42 IOC and INTERPOL, *Handbook on Protecting Sport from Competition Manipulation*, May 2016.

WHY ARE CRIMINALS INTERESTED IN SPORT?

- High profit and low risk
- Anonymity
- Exploitation of easy targets (naive sportspeople, absence of effective sport regulations and their implementation)
- Absence of consistent legislation and powers
- Ineffective supervision and regulation of gambling
- Limited law enforcement experience
- Internet has no borders, meaning police investigations are difficult and allows [Transnational Criminal Organisations] to use all the possibilities of the financial markets and tax havens

The influence and involvement of criminals in competition manipulation and associated corruption is illustrated by Europol's 2013 'Operation VETO',⁴³ which uncovered an extensive criminal network engaged in fixing football matches.

The ACIC notes in its 2017 report *Organised Crime in Australia*⁴⁴ that as well as exploiting the wagering industry to profit from sports corruption, organised criminal individuals and groups have also infiltrated the offshore online wagering service provider industry itself by becoming direct or indirect owners of such operators.

It is clear that the transformation of the WSP industry from state/territory or national-based enterprises into a globally connected industry that is largely unregulated has created new and significant opportunities for international and domestic organised criminal groups and individual criminals.

As noted by Tasmania Police:

Serious and Organised Crime investigations have exposed unregulated wagering service providers being used by persons of interest through online gambling sites to launder criminal profit. These overseas hosted sites were not able to be efficiently interrogated/identified. Such providers would present commensurate issues for any sporting related gambling activity.⁴⁵

DOMESTIC LINKS TO OFFSHORE UNREGULATED WAGERING PLATFORMS

The ACIC has been monitoring international and domestic criminal trends relating to sports integrity and offshore unregulated gambling since 2010. In 2016, in collaboration with the NISU, the ACIC commenced 'Project PETRAM' to examine domestic criminal links to, and exploitation of, offshore wagering platforms.

This work has offered valuable insights into the threats to Australia's sports integrity posed by organised crime. As outlined in the ACIC's submission:

Project PETRAM has found that:

- domestic links to offshore unregulated betting platforms are well established and strengthening
- offshore bookmaking platforms are easily accessible, provide high levels of anonymity and facilitate movement of large amounts of money
- legitimate and criminal individuals are interacting with offshore betting platforms through a well-established network of domestic and offshore agents, who are further linked to organised criminal and individual groups
- criminal individuals have infiltrated the domestic regulated bookmaking industry
- there is a capacity to launder money through both regulated and unregulated wagering platforms.⁴⁶

43 Europol, 'Update – Results from the Largest Football Match-Fixing Investigation in Europe', 6 February 2013, <<https://www.europol.europa.eu/newsroom/news/update-results-largest-football-match-fixing-investigation-in-europe>>.

44 Australian Criminal Intelligence Commission, 'Organised Crime in Australia 2017', 24 August 2017, <https://www.acic.gov.au/sites/g/files/net1491/f/2017/08/oca_2017_230817_1830.pdf>.

45 Tasmania Police, *Submission 17*.

46 Australian Criminal Intelligence Commission, *Submission 28*.

and further:

It is anticipated that the outflow of money from domestic gamblers to offshore unregulated and partially regulated bookmaking platforms will continue to increase due to:

- the capacity of offshore wagering platforms to more adequately service the needs of domestic high value and professional gamblers
- highly competitive offshore betting markets with extensive betting markets and significantly higher betting limits
- easy access to offshore bookmakers with multiple entrenched avenues for domestic gamblers to access offshore bookmakers
- the demonstrated historical capability of online bookmakers to adapt and respond to attempts to block access to their betting platforms
- the ease with which agent structures, both onshore and offshore, which circumvent domestic regulations and legislation, can be accessed by domestic gamblers
- ongoing innovation in the online gambling industry which continues to challenge existing regulatory and legislative frameworks, including the emergence of decentralised prediction markets which enable any individual to post a market online with gamblers predicting event outcomes.⁴⁷

The vulnerabilities of the offshore online market that can encourage the corruption of sporting events so as to facilitate money laundering through sports betting were identified by ACIC as:

- high levels of customer anonymity provided by offshore bookmakers
- high pay-out ratios⁴⁸
- [complicated] agent structures
- efficient settlement channels with offshore platforms
- complicit offshore bookmakers.⁴⁹

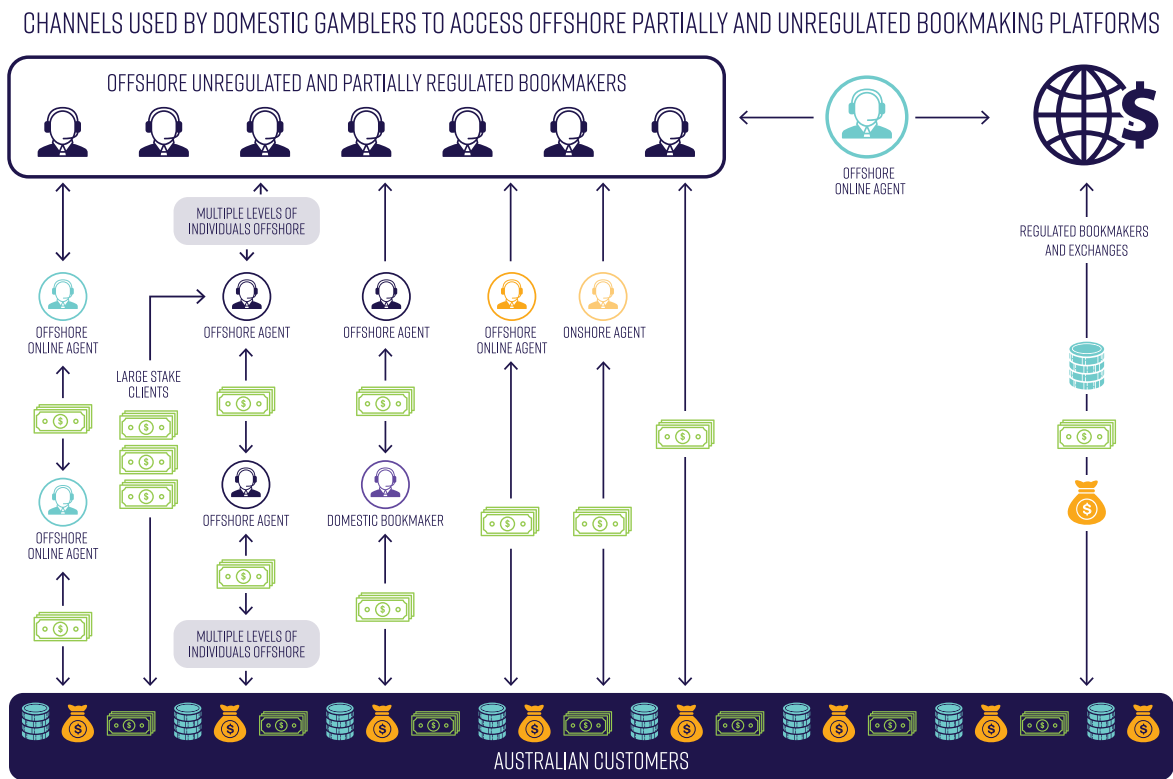
Further complicating the character of the sports wagering market, the means of accessing wagering platforms has become easier, particularly with the growing accessibility and popularity of offshore unregulated gambling platforms. ACIC Figure 3 (below) illustrates the complexity of the multiple channels by which Australians can access offshore platforms, and their likely resilience to disruption.

47 Ibid.

48 Payout ratios are the amount of money that is returned to gamblers in the form of winnings.

49 Australian Criminal Intelligence Commission, *Submission 28*.

Figure 3: Channels used by domestic gamblers to access offshore partially and unregulated bookmaking platforms



The use of blockchain technology employing crypto-currencies, and the many opportunities that exist for the collection of winning wagers overseas such as casino tokens or through irregular channels, adds to the lack of visibility and difficulty in detecting illegal activity, including competition manipulation-related wagering.

In addition to being involved with competition manipulation and wagering, including for the purposes of money laundering, organised crime can become a source of other integrity compromises of sport. The 2013 ACC *Organised Crime and Drugs in Sport* report highlights the vulnerability of sporting organisations to infiltration:

'Professional sport in Australia is highly vulnerable to organised criminal infiltration through legitimate business relationships with sports franchises and other associations. This is facilitated by lack of appropriate levels of due diligence by sporting clubs and sports governing bodies when entering into business arrangements.'⁵⁰

This issue was more recently highlighted by the outcomes of the NSW Police Strike Force NURALDA investigation. While concerns of this kind can be dealt with, at least in part, by resort to consorting laws where they exist, it is clear that a more robust response including the use of substantive criminal charges can be required.⁵¹

50 Australian Crime Commission, 'Organised Crime and Drugs in Sport', 7 February 2013.
 51 The Review Panel consulted NSW Police on 13 September 2017.

6. DOPING

6.1 PERFORMANCE AND IMAGE ENHANCING DRUGS

The use of performance and image enhancing drugs (PIEDs) in Australia has grown rapidly over recent years,⁵² and has resulted in organised criminal groups becoming involved in their trafficking.⁵³

The 2013 ACC report *Organised Crime and Drugs in Sport* indicated that organised criminal involvement in sport was likely to continue to increase:

[PIEDS and hormones], which are WADA-prohibited, are being used by professional athletes in a number of sports in Australia, with widespread use identified or suspected in a number of professional sporting codes. Organised crime has been found to have a tangible and expanding footprint in this market, and their activity is being facilitated by some coaches and support staff of elite athletes, who have orchestrated and/or condoned the use of prohibited substances and/or methods of administration

and:

The ACC considers that the organised criminal identities and groups will expand their presence in the Australian peptide and hormone market. This is based on the high demand for peptides and hormones, the highly profitable nature of the market with the mark-up on peptides and hormones reportedly up to 140 per cent and the established presence of organised criminal identities and groups in the steroid market both as distributors and users of these substances.⁵⁴

As recently as November 2017, investigations by the Australian Border Force (ABF) – the operational arm of the then Department of Immigration and Border Protection (DIBP) – resulted in the conviction and imprisonment of two Australian men for importing ‘more than 400 vials, 11 litres and 37 kilograms of powdered PIEDs’.⁵⁵

6.2 SOPHISTICATION

Due to its covert nature, it is impossible to accurately quantify the incidence of doping. However, there is widespread recognition that the statistics for positive doping tests significantly underrepresent the real scale of the problem. This is supported by a study commissioned by WADA, which suggests that as many as 45% of 2,163 athletes may have doped at the 2011 World Athletics Championships and the 2011 Arab Games.⁵⁶

It seems clear, even based solely on those instances of doping that have been *proven* over recent years, that doping has become more widespread than ever before, despite the many initiatives that have been introduced such as the athlete biological passport and whereabouts reporting requirements.

6.3 ACCESSIBILITY AND PREVALENCE

ASADA has identified a greater accessibility of athletes to doping opportunities as well as an increase in the prevalence of drug use among subelite ‘pipeline’ athletes.

In relation to the increased accessibility to doping, ASADA indicates that:⁵⁷

... athletes no longer need to rely on specialist support personnel such as doctors and coaches to find and source PIEDS. Globalisation and the internet have enabled athletes to do their own research, to access specialist doping blogs and chat rooms, and to anonymously order the substances that they seek online. This self-initiated doping can be difficult to identify without close monitoring of individual athlete performance, as the fewer people who know about the doping, the more likely it is that the doping will remain secret.

52 Australian Sports Anti-Doping Authority, *Submission 10* (both by elite and aspiring athletes, and in the general Australian community – particularly among non-competitive bodybuilders and other similar unregulated sports, and image-conscious young adults).

53 Australian Crime Commission, ‘Organised Crime and Drugs in Sport’, 7 February 2013.

54 Ibid.

55 Department of Immigration and Border Protection, ‘Two men jailed in separate investigations targeting performance-enhancing drugs’, 21 November 2017, <<http://newsroom.border.gov.au/releases/two-men-jailed-in-separate-investigations-targeting-performance-enhancing-drugs>>.

56 ‘UK Parliament publishes ‘blocked’ Tübingen study’, 8 September 2015, <<http://www.sportsintegrityinitiative.com/uk-parliament-publishes-blocked-tu-bingen-study/>>.

57 Australian Sports Anti-Doping Authority, *Submission 10*.

CASE STUDY: PARALYMPIC CYCLING

In 2016, a high-profile Paralympic cycling dual gold medallist returned a positive out-of-competition test for EPO at a training camp in Italy. The athlete later publicly revealed that, in seeking to improve his performance and self-esteem, he began researching the use of EPO in detail in 2015. This research included optimal dosing and testing protocols. A few months later, he began ordering EPO online from China, which he had delivered to a different address using a false name. The athlete's doping regime was self-initiated, self-administered and commenced and maintained in secret.

In relation to an increased incidence of doping at lower levels of sports, ASADA submitted:⁵⁸

Where once doping was considered to be a problem for elite sport only, it is now identified in all levels of sport. For example, the Cycling Independent Reform Commission Report to the President of the Union Cycliste Internationale (2015) indicated that doping was becoming 'endemic' in amateur cycling, while Drug Free Sport New Zealand recently announced a drug testing program for high school rugby teams – understood to be at high risk for doping as star players are recruited from high school into lucrative professional teams. ASADA's own intelligence indicates that doping is an emerging problem in Masters-level sport in Australia and in community level sports.

It has been reported that Drug Free Sport New Zealand (DFSNZ) is conducting an investigation into a large number of athletes in relation to the use of Clenbuterol and other anabolic steroids between 2014 and 2015, a high percentage of whom were suspected of involvement at the amateur and/or college levels.⁵⁹

6.4 DETECTION

While the detection of doping has become more sophisticated, it has been met with a concomitant increase in the efforts undertaken by athletes and doping facilitators to evade detection.

These efforts have manifested themselves in elaborate schemes to cover up positive analytical results such as the scheme discovered by the 2015 WADA investigations referred to earlier. When efforts to evade detection are discovered, this can lead to retrospective testing using the newly emerged intelligence and advancing analytical capability. Almost inevitably, however, experience has shown that new doping methods or typologies, including anti-detection measures, will emerge.⁶⁰ As ASADA notes in its submission:

Athletes are employing a range of methodologies including 'micro-dosing' (using small amounts of drugs that are quickly eliminated from the body), sophisticated 'washing out' schedules in out-of-competition cycles, and closely following and trialling the use of new PIEDS and techniques before they become identified by the World Anti-Doping Agency (WADA) and placed on the prohibited substance list. In addition, 'gene doping' – the modification of the gene profile of an athlete through the introduction of another person's genes to the body to enhance performance – has been identified by WADA as a potential future doping threat.⁶¹

This is well demonstrated by the results of retrospective testing of athlete samples from the 2008 Beijing and 2012 London Olympic Games, which identified more than 100 new positive test results that had returned negative results from samples during the Games. Nevertheless, the dopers remain ahead of the testers and the process of detection has been one of catch up.

58 Ibid.

59 Cleaver, D and Napier, L 'NZ Rugby supportive of investigation involving 80 suspected doping cheats', *NZ Herald*, 9 December 2017, <http://www.nzherald.co.nz/sport/news/article.cfm?c_id=4&objectid=11956595>.

60 Australian Sports Anti-Doping Authority, *Submission 10*.

61 Ibid.

However, even as testing techniques improve and respond to advances in doping regimes, testing is, especially now, only part of the answer for the detection of ADRVs. As ASADA notes in its submission:

It is notable that none of the historic cases of doping have been identified through testing programs – instead whistle-blowers have brought major cases of systemic and deliberate doping to the attention of anti-doping authorities who would otherwise have remained unaware. This situation highlights the complexity of the doping environment, and the need for fresh and innovative approaches.⁶²

Complex investigative and intelligence techniques are being employed by anti-doping authorities now more than ever. ASADA, UKAD⁶³ and Anti-Doping Denmark⁶⁴ indicated that reliance on intelligence and data was critical for developing cases ultimately based on either analytical or non-analytical evidence. In respect of analytical cases, ASADA, UKAD and Anti-Doping Denmark indicated that intelligence and non-analytical investigations play a significant role in determining where to best direct their resources for sample collection and analysis.

62 Australian Sports Anti-Doping Authority, *Submission 10*.

63 The Review Panel interviewed UK Anti-Doping on 4 September 2017.

64 The Review Panel interviewed ADD on 5 September 2017.

7. OTHER THREATS

Beyond the key integrity threats examined in detail above lie a diverse range of affiliate issues that can give rise to integrity issues. These include:

- unethical conduct by athlete support personnel
- supply and use of sports supplements and related products, some of which can lead to deliberate or inadvertent ADRVs
- misuse of pharmaceuticals
- selection disputes including those arising from possible gender issues
- member protection, including child protection, harassment and discrimination, participant welfare, and health and safety issues
- classification manipulation in Para-sports
- wagering on emerging sports in the absence of a controlling body (e.g. e-sports).

These diverse issues each possess their own challenges and characteristics, and potentially require the engagement of expert advisers, regulatory bodies, stakeholders, sports tribunals and others, as well as the provision of suitable resources. These can impose extra burdens on sports in fulfilling their integrity obligations, and can result in a range of responses across the sector, sometimes giving rise to inconsistency in outcome and hence uncertainty to sports and participants.

Common impacts on sports resulting from the manifestation of these issues may include: reputational damage, criminal and civil liability, diversion of resources, reduced participation rates and reduced revenues and sponsorship.

7.1 UNETHICAL CONDUCT BY ATHLETE SUPPORT PERSONNEL

Unethical conduct by athlete support personnel has been a prominent feature of sports integrity compromises internationally and in Australia in recent years.

The revised Code in 2015 included provisions to deter interactions between athletes and athlete support personnel, often referred to as 'the entourage', who have been found to engage in unethical conduct.

Within Australia this issue was a central consideration of the 2013 Senate Inquiry into the Practice of Sports Science in Australia, and led to the creation and commissioning of the Australian Sports Science Accreditation Scheme by the ASC.

7.2 REGULATION, SUPPLY AND USE OF 'SPORTS SUPPLEMENTS' AND RELATED SUBSTANCES

The use of some supplements by athletes is recognised as having a legitimate role in training regimes and during competition. However, 'supplements programs' and use of related substances by individual athletes may, if approached carelessly, have catastrophic consequences for teams and individuals, as demonstrated by the ASADA Operation COBIA outcomes and ongoing ADRVs encountered by individual athletes.

The issue is compounded by the possible contamination, adulteration and mislabelling of some sports supplements which, depending on their claimed purpose and use, may be subject to therapeutic goods regulation under the auspices of the Therapeutic Goods Administration (TGA) or food regulation standards administered by Food Standards Australia New Zealand (FSANZ). The inclusion of PIEDs or other substances of concern in supplement products has consequences not only for athletes subject to anti-doping rules, but also potential health implications for all consumers.

Responses to the integrity implications of PIED and supplements use in recent years in Australia have included:

- successive scheduling of specific substances and classes of substances on the Standard for the Uniform Scheduling of Medicines and Poisons (SUSMP – 'Poisons Standard') by the TGA following submissions by the NISU
- the development of the Sports Medicine/ Sports Science Best Practice Principles by the Australian Institute of Sport (AIS)
- development of the Sports Supplements framework by the AIS
- development and implementation of sports supplement policies by NSOs
- education, advisory and outreach initiatives by ASADA.

Notwithstanding these important initiatives, the ongoing availability and use of PIEDs in the community and the efficacy of related regulatory frameworks remains of concern.

7.3 MISUSE OF PRESCRIPTION DRUGS

The intentional misuse of prescription drugs, often with alcohol and possibly as an alternative to illicit drug use, has featured as an integrity issue in Australian sports in recent years. While the use of prescription drugs in line with recommended dosages and periods of use established by medical practitioners is critical to effective management of athlete health and injury issues, intentional misuse engages similar concerns to those associated with illicit drug use.

Under the AIS *Sports Science/Sports Medicine Best Practice Principles*, NSOs are encouraged to have a medication policy, approved by the organisation's advising medical practitioner, to oversee the use of prescription and over-the-counter medication by athletes.

7.4 SELECTION ISSUES

Selection issues arise frequently in the context of selection for national teams in the medal sports sector (Olympics, Paralympics and Commonwealth Games) and in world championships across a variety of sports. For the most part where requiring adjudication this has been left to CAS or to ad hoc tribunals established by the relevant sport. We have not considered it appropriate to recommend the creation of any specific regulatory framework or mechanism for the resolution of these disputes beyond noting that they could become part of the opt-in jurisdiction of the proposed NST.

While not the subject of further review by the Panel, we note the importance of the prompt and fair resolution of selection disputes so as to ensure a level playing field and consider that further work needs to be carried out in consultation with sports.

7.5 MEMBER PROTECTION

Protecting the most vulnerable participants in sport from bullying, harassment and abuse is an increasing area of responsibility, particularly following the Royal Commission into the Institutional Response to Child Sexual Abuse (Royal Commission). NSOs have legal obligations to prevent and address discrimination and harassment and to protect children from abuse.

The ASC and the Play by the Rules initiative (see 7.7) are already heavily engaged on this issue. They have developed policy templates and training programs to help sporting organisations meet their responsibilities. It is expected that the proposed NSIC would address further policy development in this area.

7.6 CLASSIFICATION IN PARA-SPORTS

We have not investigated specific claims of the manipulation of Para-sports classifications nor have we proposed recommendations in this area as there appear to be appropriate procedures in place. However, the topic is one that would properly fall within the remit of the proposed NSIC for monitoring and policy development if the need arises, and could potentially fall within the opt-in jurisdiction of the proposed NST.

7.7 PLAY BY THE RULES

Many of the above integrity issues in sport have been the focus of the Play by the Rules initiative.

Play by the Rules is a unique collaboration between ASC, Australian Human Rights Commission, all state and territory departments of sport and recreation, all state and territory anti-discrimination and human rights agencies, the Office of the Children's Guardian (NSW), the Australian New Zealand Sports Law Association and the Anti-Discrimination Board of NSW. These partners promote Play by the Rules through their networks, along with their own child safety, anti-discrimination and inclusion programs.

Play by the Rules provides information, resources, tools and free online training to increase the capacity and capability of administrators, coaches, officials, players, parents and spectators to assist them in preventing and dealing with discrimination, harassment, child safety, inclusion and integrity issues in sport.⁶⁵

The Royal Commission considered the Play by the Rules website to be a very valuable and effective resource to help manage child safety issues in sport.⁶⁶

We fully support its continuing existence and expect that support would be provided as may become necessary by the proposed NSIC.

⁶⁵ Play by the Rules, 'About Play by the Rules', accessed 2 January 2018, <<https://www.playbytherules.net.au/about-pbtr>>.

⁶⁶ Royal Commission into Institutional Responses to Child Sexual Abuse, 'Report into Sporting Clubs Released', 30 November 2016, <<https://www.childabuseroyalcommission.gov.au/media-releases/report-sporting-clubs-released>>.

7.8 EMERGING SPORTS

We have noted the growth and popularity of the emerging e-sports which are attracting a large following and generating significant pressure to become a recognised sport for international competition, even though, at this stage, there does not seem to be any clear international federation, let alone a controlling body at national level, in existence. E-sports have attracted substantial wagering activity and by their nature lend themselves to online and offshore wagering. The acceptance of a commitment to integrity principles both in relation to competition manipulation and doping is a matter which should be developed, under the auspices of the proposed NSIC, if e-sports are to continue to grow and be the subject of wagering activity. A similar comment applies to any other newly emerging sport that may engage a significant level of player participation.

8. THE SPORTS INTEGRITY THREAT ENVIRONMENT – CONTRIBUTING FACTORS

Several factors are in play that can have an impact on sports integrity. They include the increasing commercialisation of sport, the pressure for sporting autonomy and the vulnerabilities of athletes and match officials.

8.1 COMMERCIALISATION

While global sports wagering market turnover is currently estimated at up to US\$1.5 trillion, the business of sports reaches far wider than wagering, spanning the field from franchising, sponsorships and media rights to the food and memorabilia stands at stadiums. In 2014, an AT Kearney study of the business of sport valued the global sports industry – not including sports wagering – at between US\$600 and US\$700 billion,⁶⁷ which was about 1% of global GDP at that time. Some projections⁶⁸ estimate the global market as high as US\$1.5 trillion.

The Australian Government provides more than AU\$300 million funding to sport. Australians themselves pay about AU\$10 billion annually on fees for participation in sport and other physical activity.⁶⁹ The overall size of the sports market in Australia was estimated in 2015 at AU\$27 billion.⁷⁰

This immense capitalisation of sport, through both wagering and commercialisation, is a key aspect of the modern sports integrity threat landscape. Sporting clubs need championships, wins and star players to maintain a strong following and revenue stream. Subelite players, critical to the overall sporting landscape but often paid very little, might be tempted, with vast amounts of money washing through the system, to engage in competition manipulation.

As with wagering,⁷¹ with greater liquidity in sport comes greater opportunity and motive for corruption.

8.2 SPORTS AUTONOMY

The 2015 Australian Institute of Criminology (AIC) paper titled *Corruption in Australian Sport* outlined structural and cultural risk factors as ‘increasing the opportunity for corruption in sport’. At the top of this list was⁷² ‘the “closed environment” in which athletes and sporting officials operate’.

Traditionally, sport runs sport, setting the rules for administration, competition and governance, including rules regarding integrity issues at international and national levels. Even when independent authorities are tasked with the detection and substantiation of corruption – such as in the case of anti-doping – sport often remains responsible for administering hearings and determining sanctions.

Maintaining organisational autonomy is a high priority for national and international sporting organisations. Illustrating the complex nature of this relationship, the IOC President, in a 2013 address to the UN General Assembly in New York promulgated the concept of ‘responsible autonomy’:

Regardless of where in the world we practise sport, the rules are the same. They are recognised worldwide. They are based on a common ‘global ethic’ of fair play, tolerance and friendship. But to apply this ‘universal law’

67 AT Kearney, ‘Winning in the Business of Sports’, 15 February 2014, <<https://www.atkearney.in/documents/10192/5258876/Winning+in+the+Business+of+Sports.pdf/ed85b644-7633-469d-8f7a-99e4a50aad8c>>.

68 Bradley, M, ‘We can’t handle the idea that sport is no longer just sport’, 21 January 2016, *Australian Broadcasting Corporation*, <<http://www.abc.net.au/news/2016-01-21/bradley-corruption-in-professional-sport-should-be-no-surprise/7101508>>; see also Lewis, C, ‘Jarryd Hayne: another example of Australia’s global sporting success’, 15 September 2015, *The Roar*, <<http://www.theroar.com.au/2015/09/15/jarryd-hayne-another-example-australia-succeeding-global-sport/>>.

69 Australian Sports Commission, ‘Organisational Details’, <https://www.ausport.gov.au/about/australian_sports_directory/all_nsos?sq_content_src=%252BdXjsPWh0dHAIM0EIMkYIMkZtYXRyaXhzc2lmcVwb3J0LmF1c3BvcnQuZ292LmF1JTJGT3JnYW5pc2F0aW9ucyZhbGw9MQ%253D%253D&organisationName=&organisationCategory=&fundingStatus=&pageSize=500&sortOrder=name_asc>, accessed 14 December 2017.

70 Ruthven, P, IBIS World, published in *Business Review Weekly*, July 2014.

71 Andreff, W, Complexity triggered by economic globalisation—the issue of on-line betting-related match fixing, 2017, 5 *Systems* 12.

72 Bricknell, S, ‘Corruption in Australian Sport’, 490 Trends and Issues in Crime and Criminal Justice, Australian Institute of Criminology, February 2015.

worldwide and spread our values globally, sport has to enjoy responsible autonomy. Politics must respect this sporting autonomy. For only then can sport organisations implement these universal values amidst all the differing laws, customs and traditions.⁷³

There is an important reason for sports to retain some autonomy – it is essential, particularly at an international level, for sport to remain neutral, outside of and above politics, to preserve uniform rules and standards. However, this autonomy, and the closed environment that it may create, can be a tool for sports to preserve their organisational reputations and to protect their revenue streams, at the cost of proactively targeting integrity issues. It is therefore critical that, as part of the autonomy exercised by sport, there is an ongoing responsibility to address relevant integrity challenges.

COMPPS supports the retention of autonomy:

The Sports are subject to the general law, including the criminal law. The concept of a common approach to handling matters that go to the reputation of a sport (and by extension, its whole value and core business) should not be delegated to another party. Integrity is a major part of reputation. A sport cannot be the custodian of the sport without control of the matters affecting its reputation. If this is outsourced or delegated to an entity over which the sport has no control, then this is an effective ceding of its responsibility to govern the business. No major corporate such as a bank, airline or consumer retail business would do this. It would undermine the fundamental principle of the governance model of Australian sport – that it is the board, democratically elected by its members, who should govern the sport.⁷⁴

The Panel notes and commends the efforts of Australian sporting organisations to develop and enhance their integrity arrangements. Some COMPPS sports in particular have invested heavily in developing and maintaining an integrity infrastructure and capabilities. The NRL, for example, spends more than AU\$5 million on its integrity unit each year, and has announced

a AU\$35 million boost over the next five years following the Strike Force NURALDA revelations.⁷⁵

However, some stakeholders have submitted that the pervasive ‘sport runs sport’ culture and motivation to protect reputation and public standing poses an inherent conflict with integrity responsibilities, and may manifest in a reluctance to share suspicions or evidence of compromise through concerns for reputational and brand damage and avoidance of public controversy.

Information gathered through sports’ integrity mechanisms may not automatically be shared with authorities, WSPs or other sports promptly, if at all. In some instances this may be due to a misunderstanding of privacy or regulatory laws. In other cases it may be due to a perceived need for reputational protection or to an approach that places a premium on an individual sport keeping its own house in order.

Illustrative of this concern has been that very often the fact of a serious breach of sports integrity has been discovered, not through regulatory action, but rather as a result of investigative journalism, including a media-arranged ‘sting’. An example was the *News of the World* investigation in 2010 that uncovered competition manipulation of a test match between England and Pakistan at Lords that led to convictions of those involved.

The autonomy of sport is also under challenge more broadly, as illustrated by the 8 December 2017 decision of the European Commission that:

‘International Skating Union (ISU) rules imposing severe penalties on athletes participating in speed skating competitions that are not authorised by the ISU are in breach of EU antitrust law.’⁷⁶

The decision requires the ISU to modify its eligibility rules so as to not impose unjustified penalties on athletes who participate in competitions that pose no risk to sports objectives.

73 Bach, T, ‘Unity in diversity: candidature for the presidency of the International Olympic Committee’, 8 July 2013, <www.olympic.org/Documents/IOC_President/Manifesto_Thomas_Bach-eng.pdf>.

74 Coalition of Major Professional and Participation Sports, *Submission 20*.

75 Read, B, ‘NRL integrity unit slated for major funding boost to combat corruption’, *The Australian*, 28 October 2017, <<http://www.theaustralian.com.au/sport/nrl/nrl-integrity-unit-slated-for-major-funding-boost-to-combat-corruption/news-story/7a002f9061c34b6bf3bfa49ec984a232>>.

76 European Commission: Press Release, ‘Antitrust: International Skating Union’s restrictive penalties on athletes breach EU competition rules’, <http://europa.eu/rapid/press-release_IP-17-5184_en.htm>, 8 December 2017.

8.3 VULNERABILITIES OF ATHLETES AND OFFICIALS

Some athletes and officials may be vulnerable to becoming involved in sports corruption due to personal weakness and compromise, financial or other pressures, or ambition, which may then be exploited by criminals or others, through blackmail, extortion or grooming.

The IOC-INTERPOL *Handbook on Protecting Sport from Competition Manipulation* notes:

While the motivations to commit fraud and corruption are often due to financial need – perceived or real – and a personal appetite for wealth, other factors and weaknesses may include:

- Whether the salary of the athlete/official has been paid
- Addiction (drugs, sex, alcohol)
- Excessive gambling and gambling debts
- Bad sports results and lack of recognition and reward
- Pressure, opportunity and rationalisation
- Living beyond personal income and high personal debt
- Desire for personal progression, greed, naivety of the target, unfulfilled ambition
- Pressure from family and friends to succeed
- Fluid 'moral values' and a desire to challenge and/or abuse the 'system'.⁷⁷

Many of these are self-explanatory. However, the issues of financial insecurity, and grassroots and youth sport bear further examination.

In 2015, the AIC listed among the strongest match-fixing risk factors 'negligible pay and lack of financial security, particularly among second and lower-tier players and officials'.⁷⁸

It is well accepted that athletes most vulnerable to competition manipulation are those in the lower professional or semi-professional leagues. This is because, ultimately, these athletes are usually paid modestly but are often still incurring significant expenses and are unable, due to the demands of professional sport, to augment their income with extra employment.

Sports wagering fraud detection company Sportradar identified lower professional and semi-professional football (soccer) leagues as 'high risk' given the widespread and consistent wagering markets offered on these competitions, the poor financial health of many clubs and low player remuneration. Of extra concern in this context is the fact that at this level there is likely to be less oversight or visibility of any fix, particularly when the amounts wagered are likely to be small.

Young athletes are also vulnerable to approaches from outsiders in attempts to manipulate but also to groom those who are seen to have a significant future potential in their sport. Young athletes are particularly at risk from approaches of this kind and for offers for the supply of prohibited substances due to their immaturity, the high comparative impact of modest bribes, and the presumed benefit of performance-enhancing substances. This is compounded by low levels of governance and oversight in junior competitions. The availability of Asian wagering markets on sports at this level opens up a particular potential for competition manipulation and other corrupt activity.

Athletes in the top professional leagues are also vulnerable to becoming drawn into corrupt activity. This can stem from personal compromises identified (if not engineered) and exploited by criminals, including illicit or performance-enhancing drug use, sexual activity and accrual of gambling debts.

In its 2013 report *Organised Crime and Drugs in Sport*, the then ACC reported:

Relationships between athletes and organised crime identities can be exploited by criminals to corrupt the athlete and give a form of social status to the criminal, in the same way that the steroid market has been used by organised crime to corrupt law enforcement officers.

Illicit drug use by athletes leaves them particularly vulnerable to exploitation for other criminal purposes, including match fixing and fraud arising out of the provision of 'inside information'.⁷⁹

The attraction to doping may be due to a variety of different pressures, often strongly associated with the level at which an athlete competes. Personal ambition can be a strong driving factor at all levels, whether for monetary gain or the prestige that accompanies success.

77 IOC and INTERPOL, *Handbook on Protecting Sport from Competition Manipulation*, May 2016.

78 Bricknell, S, 'Corruption in Australian Sport', 490 Trends and Issues in Crime and Criminal Justice, Australian Institute of Criminology, February 2015.

79 Australian Crime Commission, 'Organised Crime and Drugs in Sport', 7 February 2013.

The status conferred by sporting success on the world stage can also lead to government involvement in doping.

According to ASADA,⁸⁰ pressure felt by athletes involved in professional sports that can generate a substantial income can be significant, as they:

'... must sustain high levels of performance to maintain their contracts, salaries and sponsorships, and the future livelihoods of athletes, players and coaches are contingent on winning'⁸¹

Extra pressures identified by ASADA include:⁸²

- increased reliance on supplements (sometimes with unlisted ingredients) in circumstances where new game schedules and new forms of the game have required more frequent competition, with reduced recovery time and increased pressure to quickly recuperate from injury
- cultural factors wherein performing and winning is valued above the health and wellbeing of the athlete and the integrity of the sport, leading to the use of PIEDS to maximise on-field performance
- pressure on professional athletes towards the end of their careers who may seek the support of PIEDS to extend their time in the game.

Factors identified by ASADA as influencing the potential vulnerability of athletes competing at

Olympic, Paralympic, Commonwealth and World Championship level include:

- bearing the weight of the national history of performance at an international level, and feeling that they are letting their team and their sport down if they do not perform
- government funding of sports being linked to medal and world championship tallies
- coaches feeling acute pressure to consistently produce winning athletes
- a culture that rationalises doping as an essential element to remaining competitive.

ASADA intelligence suggests that there is some vulnerability of Masters-level athletes to doping, motivated by a desire to counter age-related reduction in performance. It indicates doping in recreational sport has been increasing due to a desire to improve sporting outcomes and/or physical appearance, and a correlation with increase in the use of PIEDS across the general population. A recent survey conducted by Bond University to gauge current trends in PIEDS use among the population found that the mean age of users was 31, with the age range of those surveyed being 18–52.⁸³

In summary, there are many and various threats to the integrity of sports in Australia and in the factors giving rise to them that need to be addressed. In the following chapters, we closely consider the key threats and develop recommendations to deliver a coordinated and effective response.

80 Australian Sports Anti-Doping Authority, *Submission 10*.

81 Ibid.

82 Ibid.

83 Goldworthy, T & McGillivray, L, 'Beauty in Bulk: An Examination of Performance and Image Enhancing Drug (PIED) Use and Attitudes', Bond University, May 2016.

CHAPTER

3

COMBATING MANIPULATION OF SPORTS COMPETITIONS

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I. INTRODUCTION

In Australia, sports-specific match-fixing and related corruption offences were introduced in 2012 in New South Wales, followed by other jurisdictions.

The ACIC's work in this area demonstrates that there is significant risk of an increase in match-fixing and related corruption in Australia associated with rapidly growing sports wagering markets, in particular the online offshore wagering platforms including those in Asia – where illegal gambling is one of the most prevalent criminal activities.⁸⁴

In a recent review of the European experience of the problem of match-fixing, Wladimir Andreff, Emeritus Professor at Université Paris 1 Panthéon-Sorbonne and member of the Observatory of the Sports Economy at the (French) Ministry of Sports, observed in an economic analysis of match-fixing and corruption in sport:

Despite the surveillance of 30,000 games per season in 43 European football leagues, this corrupt business is skyrocketing; in 2011, about 10% of matches were felt suspicious, in 2012 about 700 games were found to be fixed, primarily in lower professional divisions. Many of these fraudulent networks are based in Asia, namely China, Malaysia, Singapore, the Philippines where betting outlays are not limited, and in some Central Eastern European countries. Interpol dismantled 272 such irregular bookmakers in 2007, arrested 1300 people suspected of organising bets on fixed matches from Asia and seized \$16 million in cash in 2008. Before cracking down on these networks, Interpol assessed the volume of their irregular bets at \$1.5 billion. Talking about corrupt sport in 2016 cannot avoid focusing on match fixing connected to irregular betting.

As is the case with doping in sport, it is certain that statistics relating to proven instances of match-fixing underrepresent the true scale of the problem, including in Australia. This is likely to be due to the difficulties in the detection of even simple cases. It is also likely to be due to the ease with which sophisticated criminal syndicates can conceal their activities.

Having examined the effectiveness of the 2011 National Policy, we have formed the view it has yet to deliver a cohesive response to match-fixing and related corruption, and that a more robust capability with a national and international focus is required.

For the reasons developed in this chapter, we consider that there is significant merit in Australia becoming a party to the Council of Europe Convention on the Manipulation of Sports Competitions (Macolin Convention). This will not only provide a focus for Australia's international collaboration against match-fixing but it will also provide a structure within which a national capability can be developed – initially through the establishment of a National Platform, progressing to the establishment of a National Sports Integrity Commission.

In our view, what is required now is the establishment of:

- a National Platform
- Commonwealth criminal offences for match-fixing and related conduct
- a national sports wagering regulatory scheme.

This chapter focuses on each of these objectives.

84 INTERPOL, 'Match-fixing and illegal gambling', accessed 9 January 2018, <<https://www.interpol.int/Crime-areas/Crimes-in-sport/Match-fixing-and-illegal-gambling>>.

2. KEY FINDINGS AND RECOMMENDATIONS

KEY FINDINGS

NATIONAL POLICY ON MATCH-FIXING IN SPORT

1. At present, Australia lacks a cohesive, well-resourced national capability to confront and respond to domestic and international match-fixing and related corruption of sport. In part, this is because the Australian Government has insufficient constitutional authority to enact legislation to effectively address at a national level the threat of match-fixing and corruption of sport, resulting in a patchwork national response.
2. A national-level capability is required now more than ever if Australia is to effectively respond to escalating integrity risks associated with the rapid growth of the regulated sports wagering market in Australia, as well as the growing opportunities for match-fixing and related corruption associated with offshore, unregulated wagering providers operating online.
3. Australian governments have been proactive in efforts to combat match-fixing and related corruption – the adoption of the National Policy and the establishment of the National Integrity of Sport Unit agreed by all Australian governments in 2011 were landmark initiatives, and have served as a model internationally.
4. The National Policy remains only partially implemented, and the resulting fragmentation and inconsistency of current regulatory, monitoring and enforcement regimes across Australia delivers a national response that is insufficient to meet current and foreseeable future threats.
5. Even if the National Policy was fully implemented by all jurisdictions, varied approaches to implementation allowable under the National Policy, as well as the lack of a central body able to receive, assess and disseminate sports integrity related law-enforcement data or private information from across all jurisdictions would still render Australia's response insufficient to address contemporary integrity threats.

ESTABLISHING CRIMINAL OFFENCES

6. A harmonised national approach to criminalising match-fixing, as agreed under the National Policy, is lacking, with inconsistent match-fixing offences (or general offences purported to cover match-fixing) across states and territories.
7. Match-fixing offences tend to be cross-jurisdictional or multijurisdictional (due to the national and international nature of major sporting competitions). Inconsistency across jurisdictions and a lack of national criminal legislation therefore inhibits law-enforcement agencies in their investigation and prosecution of offences relating to match-fixing and related corruption in sport.
8. Current laws are not able to address transnational criminal activity. This capability is essential given the international nature of sporting competitions (including for Australian athletes and officials training, competing and officiating overseas).
9. Penalties applied to offences relating to insider information (in those jurisdictions that recognise the use of insider information as an offence) are insufficient to address the broad range of behaviours (including serious criminality) which might relate to insider information offences. Short statutory limitation periods, and an inability of law enforcement to utilise telephone interception powers due to insufficient penalties demonstrate a failure to recognise the role that insider information offences play in serious criminality and corruption, including grooming etc.

SPORTS WAGERING REGULATION

10. Implementation of the 'national operational model for sports wagering' agreed under the National Policy has been insufficient to achieve the nationally consistent regulation envisaged. However, because the model has been fully implemented in Australia's most populous jurisdictions (NSW and Victoria), and due to the concentration of corporate bookmakers in the Northern Territory (where the model has been partially implemented via licensing conditions), the governing principles of the model seem to be given effect, at least to some extent.
11. The lack of consistency means that Commonwealth and state and territory regulation of sports wagering remains highly variable and complex, creating an undue administrative burden on sporting organisations and Wagering Service Providers, including multiple overlapping reporting requirements.
12. Current mechanisms for the assessment and approval of types of wagers offered on sport in Australia (or involving athletes representing Australia) are inadequate as they fail to incorporate sufficient intelligence and information from law-enforcement agencies, do not adequately reflect risk assessment, and give rise to a real or perceived conflict of interest for sporting organisations.
13. Sporting organisations and Wagering Service Providers lack confidence in the reliability of statutory safeguards associated with product fee and integrity arrangements due to the lack of consistent national legislation enacting the operational model for sports wagering.
14. Wagering Service Providers offer bet types on Australian sport beyond those agreed with sports, giving rise to integrity risk because of the absence of a systematic proactive response from relevant regulatory bodies.

INFORMATION SHARING AND INTELLIGENCE COLLECTION (INCLUDING LAW ENFORCEMENT)

15. The capability and capacity across Australian sports integrity governance is seriously inhibited by the fragmentation of sports wagering regulation, and the way in which various relevant organisations gather, use, store and share data and intelligence.
16. Relevant data and intelligence are being collected across the sector through various integrity units; however, they are currently insufficient to combat modern match-fixing and related corruption. Further, failure to systematically and routinely collect/share this information centrally for effective collation, analysis and dissemination undermines the effort of each individual organisation currently investing in integrity measures.
17. The establishment of the Sports Betting Integrity Unit in November 2017 (a joint initiative of the National Integrity of Sport Unit and the Australian Criminal Intelligence Commission) represents a major improvement in Australia's national response. However, it is essential that information collection, sharing analysis, and dissemination between relevant organisations become routine, systematic and legislation based, rather than occurring by exception or through exercise of limited coercive powers.

RECOMMENDATIONS

1. That Australia become a party to the Council of Europe Convention on the Manipulation of Sports Competitions (Macolin Convention), allowing the enactment of national match-fixing criminal legislation, supporting an effective global response to international sport integrity matters, acknowledging the transnational nature of match-fixing and related corruption in sport, and recognising the global quality of threats to the integrity of Australian-based competitions.
2. That the Australian Government establish national match-fixing offences similar to those in New South Wales, while continuing to encourage national consistency in relevant criminal provisions introduced by state and territory governments.
3. That Commonwealth criminal offences be formulated such that:
 - offence provisions have transnational application
 - match-fixing offences are linked to wagering outcomes, irrespective of whether said wager would have been otherwise lawful
 - provisions include offences for the use of inside information
 - offence provisions (including for sentencing) are calibrated such as to enliven the possibility of using telecommunications intercept powers
 - offence provisions are calibrated such as to ensure that any applicable time limit for start of proceedings will not interfere with reasonably conducted investigations of the type anticipated.
4. That the regulation of sports wagering become subject to an Australian Sports Wagering Scheme to streamline current processes and to provide clarity, transparency and consistency of the regulatory regime at a national level, with regulatory responsibilities to sit within the proposed National Platform (outlined below).
5. That the Australian Sports Wagering Scheme give full effect to the operational model for sports betting anticipated in the National Policy, including requirements for information and intelligence gathering and sharing by sporting organisations and Wagering Service Providers (WSPs). Through the Australian Sports Wagering Scheme, the National Platform is to be responsible for:
 - assessing and declaring, as appropriate, National Sporting Organisations as sports controlling bodies (SCBs) for the purposes of the Australian Sports Wagering Scheme and to be eligible to enter into product fee arrangements
 - assessing and declaring WSPs, otherwise licensed as a wagering service provider in a state or territory, as a 'sports wagering service provider' for the purposes of the Australian Sports Wagering Scheme, and to be authorised to offer markets on Australian sport.
6. That the administration of the Australian Sports Wagering Scheme, particularly for the assessment of applications from National Sporting Organisations and Wagering Service Providers for relevant recognition, be such as to bring together a range of expertise including from the Australian Criminal Intelligence Commission, Australian Communications and Media Authority, Australian Sports Anti-Doping Authority, Australian Sports Commission and National Integrity of Sport Unit to ensure that a robust system of integrity oversight, monitoring and compliance is in place.
7. That Sports Controlling Body recognition from the National Platform, involving an assessment of the sufficiency of the integrity policies and procedures implemented by National Sporting Organisations (including anti-doping policies, anti-match-fixing policies and engagement, where appropriate, of the jurisdiction of the National Sports tribunal), be a prerequisite for government funding and recognition.
8. That the National Platform have, as part of the Australian Sports Wagering Scheme, a dispute resolution function to be exercised in circumstances in which an agreement cannot be reached between a Sports Wagering Service Provider (SWSP) and Sports Controlling Body. Also, that the National Platform have available compliance and enforcement powers for SWSPs offering wagering markets on contingencies that are not authorised and/or are the subject of an agreement between the SWSP and the relevant SCB.

9. That the National Platform be responsible for determining and publishing a schedule of authorised wagering contingencies, following consultation, and in collaboration with law enforcement, sporting organisations, Sports Controlling Bodies, Wagering Service Providers, and state and territory regulators.
10. That consideration be given to allowing online in-play wagering in Australia through authorised Sports Wagering Service Providers (SWSPs) to provide a more effective identification of potential wagering-related match-fixing or other forms of sports corruption, and so as to allow sports, authorised Australian SWSPs and governments to receive the financial benefits generated.
11. That, whether or not Australia becomes a party to the Macolin Convention, and initially independent, if necessary, of the establishment of the proposed National Sports Integrity Commission, the Australian Government, as a matter of urgency, formalise and expand the work of the Sports Betting Integrity Unit by establishing a National Platform type entity with the powers and capabilities required to address the threat of match-fixing as outlined in Article 13 of the Macolin Convention (including the national regulation of sports wagering, administering the Australian Sports Wagering Scheme, and for information and data sharing).
12. That, on the establishment of the National Sports Integrity Commission (NSIC), the functions, powers and capabilities of the National Platform be subsumed within the NSIC, as part of the its broader regulatory and law-enforcement function. The NSIC will then be identified as Australia's 'National Platform' for the purposes of satisfying Article 13 of the Macolin Convention, as necessary.
13. That the National Platform facilitate a Suspicious Activity Alert System (SAAS), enabling real-time receipt and dissemination of alerts, collection of responses and assessment of integrity risk, to allow timely and decisive action. Participation in the SAAS is to become a condition of Sports Wagering Service Provider status, with the National Platform to have the authority to nationally suspend wagering markets where significant risk of match-fixing is identified.
14. That a central clearinghouse function be established within the National Platform to receive, assess and disseminate data, information and intelligence from Sports Wagering Service Providers (SWSPs) and Sports Controlling Bodies (SCBs), including:
 - line-by-line transaction data and account information from SWSPs (including for sports wagering and racing)
 - all relevant player, support personnel and other sport-integrity related data (including as might be deemed relevant from time to time) from SCBs.
15. That provision of relevant sports integrity related data, information and intelligence (including the reporting of any suspicious activity in a timely manner) be a condition of Sports Controlling Body and Sports Wagering Service Provider status.
16. That the National Platform have status as a law-enforcement agency to receive, deal with and disseminate law enforcement and private information.

3. THE NATIONAL POLICY ON MATCH-FIXING IN SPORT

In 2011, all Australian sports ministers endorsed, on behalf of their governments, the National Policy. The National Policy sought to achieve its objective through two key reforms: the establishment of match-fixing criminal offence provisions, and a system of sports wagering regulation – both to be implemented at the state and territory level.

3.1 THE NATIONAL POLICY – ITS IMPLEMENTATION

The development of the National Policy and the subsequent establishment of the NISU have served as a model internationally. COMPPS indicated that:

The National Policy framework has in fact provided benefit and assistance to International Federations in addressing match-fixing and corrupt betting practices and is viewed favourably by some International Federations when compared to other jurisdictions.⁸⁵

Similarly, the European Sport Security Association (ESSA) submitted that:

Australia developed a National Policy on Match-Fixing in Sport in 2011 and should be commended for its proactive approach in this regard; ESSA supports much of the content of the Policy.⁸⁶

Sportradar, one of the largest global companies providing betting-related sports integrity services through sports and wagering market data analysis, submitted: ‘the Australian sports betting integrity system is highly regarded as a shining light globally’.⁸⁷

Through the National Policy, Australian governments sought to clearly define the roles and responsibilities of sports, the wagering industry, government and law enforcement in the fight against match-fixing, similar to arrangements developed and implemented in Victoria in 2007. They agreed to pursue nationally consistent

legislative arrangements to criminalise match-fixing and related conduct. They also agreed to establish a system of cooperative partnership between sporting organisations and wagering service providers, underpinned by nationally consistent wagering legislation and regulation to be introduced and implemented at the state and territory level. This system became known as the ‘Sports Betting Operational Model’ (SBOM).

However, the National Policy remains only partially implemented and has not reached its full potential. As COMPPS noted:

Since 2011, however, implementation of aspects of National Policy has been sporadic. As mentioned earlier, some but not all jurisdictions have introduced match-fixing offences. Several have not introduced legislation to formally appoint sports organisations as “Sports Controlling Bodies” [A functional element of the Sports Betting Operational Model]⁸⁸

In our view, the resulting fragmentation and inconsistency of current regulatory and enforcement regimes across Australia, including different criminal laws, delivers a national response that is insufficient to meet current and foreseeable future threats.

Stakeholders expressed diverse views in their submissions as to how the current framework under the National Policy might be improved. Some expressed a preference for a national regulatory capacity; others cautioned against this approach, indicating instead that achieving a greater consistency across the states and territories

85 Coalition of Major Professional and Participations Sports, *Submission 20*.

86 European Sport Security Association, *Submission 27* (National Sport Plan).

87 The Panel consulted with Sportradar on 9 August 2017.

88 Coalition of Major Professional and Participation Sports, *Submission 20*.

in the implementation of the National Policy would be preferable;⁸⁹ yet others were equivocal, or suggested that a further working party be established to consider the options.⁹⁰

In our view, the preferred approach is clear. Even if the National Policy was fully implemented by all jurisdictions, the varied approaches to implementation allowable under the National Policy, as well as the lack of a central body able to receive, assess and disseminate sports integrity related law-enforcement data or private information across all jurisdictions, would still render Australia's response insufficient to address contemporary integrity threats.

3.2 KEY CHARACTERISTICS OF AN EFFECTIVE RESPONSE TO THE THREAT OF MATCH-FIXING

In our view, the key characteristics of an effective response to the threat of match-fixing must include:

- a strong program of education for athletes and officials which arms participants with the knowledge they need, and eliminates excuses for inappropriate behaviour
- effective regulation of sports wagering, which reduces the opportunities to profit from match-fixing, and eliminates wagering on events that carry a high risk of corruption
- a strong and consistent regime of criminal penalties, and sport sanctions for engaging in prohibited behaviour
- a robust, coordinated detection capability, able to develop a reputation for effective detection and prosecution of match-fixing and related offences.

We acknowledge that the National Policy has been effective in establishing, in part, some of the key characteristics outlined above. It has:

- encouraged sporting organisations to develop and implement anti-match-fixing policies, including with respect to education programs

- resulted in major sports establishing dedicated integrity units
- fostered relationships between wagering service providers and sporting organisations
- assisted in securing better information sharing and in delivering a fair financial return for sports from sports wagering
- resulted in the establishment of specific match-fixing criminal offence provisions in all but two jurisdictions.

However, because the National Policy is agreed nationally but implemented at the state and territory level, by its nature it has limited effectiveness as a means of establishing an effective national capability. To date this has manifested in:

- inconsistent implementation of sports wagering regulation, leading to uncertainty for key stakeholders that operate at the national level, and excessive administrative burdens associated with regulatory compliance
- a jurisdictional variation in the establishment and form of criminal offence provisions even though offences are likely to be committed across multiple domestic and/or international jurisdictions
- a lack of reliable and coordinated information and intelligence sharing between stakeholders and between jurisdictions, undermining the current detection capability.

In our view, Australia must now build on the foundations that have been established by the National Policy, from a truly national perspective – that is at the Commonwealth level. The Macolin Convention – an international agreement on match-fixing to be applied at the national level – provides an effective framework for the further development of Australia's national capability that we consider necessary.

89 Tabcorp, *Submission 29*.

90 Coalition of Major Professional and Participation Sports, *Submission 20*.

4. THE COUNCIL OF EUROPE CONVENTION ON THE MANIPULATION OF SPORTS COMPETITIONS (MACOLIN CONVENTION)

The Macolin Convention is an initiative of the Council of Europe with the purpose of galvanising and harmonising a collective response to ‘combat the manipulation of sports competitions in order to protect the integrity of sport and sports ethics in accordance with the principle of the autonomy of sport’.⁹¹

Australia was one of seven states outside of the Council of Europe which took part in drawing up the Macolin Convention, which was opened for signature in September 2014. The Macolin Convention encourages a consistent application of measures by sporting organisations, sports wagering providers and governments to achieve a greater cooperation and coordination in the prevention of match manipulation. Its key features are:

- prevention
- law enforcement
- international cooperation measures
- exchange of information (including through the establishment of a National Platform).

Open for signature by all member states of the Council of Europe, in recognition of the global nature of match manipulation and sports corruption, the Macolin Convention is also open for signature to those non-member states that participated in drawing it up (including Australia), and other non-member states by application.

Throughout the consultation phase of the Review, Australian stakeholders expressed support for Australia becoming a party to the Macolin Convention. We also consulted with international counterparts engaged with the ‘Macolin process’ including members of the Council of Europe – the United Kingdom and Denmark – and the European Sport Security Association (ESSA), all of whom saw great merit in states, including Australia, becoming a Party to the Macolin Convention.

ESSA, having been heavily involved in the development of the Macolin Convention and ongoing work through thematic networks focusing on the role and regulation of sports wagering service providers, indicated that its members (the majority of the major European licensed online and offline private betting operators) ‘fully support 90% of the terms of the Convention’,⁹² and that operationally, all relevant stakeholders stand to benefit from a state becoming a party to the Macolin Convention and establishing the required national infrastructure.

Similarly, the UK Gambling Commission (UKGC) and Anti-Doping Denmark – each the registered ‘National Platform’ (discussed further below) for their respective states, indicated the significant benefit that had been gained through involvement in the Macolin Convention working parties.⁹³ The UK’s nomination of a National Platform and involvement in the Group of Copenhagen (the Network of National Platforms) illustrates the broad utility recognised by states in becoming part of the ‘Macolin Community’.

In our view, the merits of Australia becoming a Party to the Macolin Convention are threefold:

First, Australia’s present lack of a cohesive, well-resourced national capability to confront and respond to domestic and international match-fixing and related corruption of sport is, at least in part, due to the absence of a consistent legislative framework across the states and territories.

The Macolin Convention would provide further authority for the Commonwealth, through

91 Council of Europe Convention on the Manipulation of Sports Competitions, opened for signature 18 September 2014, CETS No. 215 a 1.1, Article 1.1.

92 The Panel consulted with ESSA on 7 September 2017.

93 The Panel consulted with the UKGC on 26 September 2017 and Anti-Doping Denmark on 5 September 2017.

the external affairs power in the Australian Constitution⁹⁴, to enact the required criminal legislation that we consider essential.

Second, becoming a Party to the Macolin Convention would afford access for all relevant Australian stakeholders to the various thematic networks that have been established by the Secretariat of the Council of Europe responsible its administration. Through these networks, current and prospective parties to the Convention are preparing structures to support its implementation to ensure that all necessary monitoring mechanisms are ready for when it comes into force.⁹⁵ This 'Macolin roadmap' for implementation is a significant work plan, and has included the establishment of a prototype of the Follow-up Committee – the Copenhagen Group,⁹⁶ which meets to discuss the relevant issues.

It would be beneficial for Australia to become a Party at this early stage, enabling the Australian Government and domestic stakeholders to engage in the development of appropriate operational guidelines and policies.

Third, greater engagement with current and prospective parties to the Macolin Convention would enable collaboration through the existing projects that are examining the new and emerging

issues in sports integrity and betting fraud that are of concern, including:

- the increasing prevalence of illegal sports wagering (including on online unregulated platforms)
- the rise of new sports that attract wagering and pose risks of match-fixing yet lack an overarching set of rules or governing body
- the use of Bitcoin and other virtual currencies in sports wagering that can assist match-fixers in frustrating detection efforts.

RECOMMENDATION I

That Australia become a party to the Council of Europe Convention on the Manipulation of Sports Competitions (Macolin Convention), allowing the enactment of national match-fixing criminal legislation, supporting an effective global response to international sports integrity matters, acknowledging the transnational nature of competition manipulation and related corruption in sport, and recognising the global quality of threats to the integrity of Australian-based competitions.

94 *Commonwealth of Australia Constitution Act 1900* (Cth) s 51(xxix).

95 Five ratifications are required for the Macolin Convention to come into force, with a minimum of three of these being member states of the Council of Europe. Thus far, 29 states have become signatories and three states have ratified the Convention.

96 Currently a representative group of National Platforms.

5. SPORTS' ROLE IN COMBATING MATCH-FIXING AND RELATED CORRUPTION

Both the National Policy and the Macolin Convention recognise the role of sporting organisations in protecting the integrity of their sports.

5.1 REQUIREMENTS UNDER THE NATIONAL POLICY AND ASC FUNDING ARRANGEMENTS

Under the current arrangements of the National Policy, sporting organisations are expected to:

- establish anti-match-fixing policies and practices
- establish codes of conduct and provide an appropriate disciplinary framework
- develop and implement education programs for participants
- to the extent that they wish to participate in the SBOM, enter into integrity agreements with wagering service providers.

These expectations extended to NSOs that have achieved Sports Controlling Body status (and have participated in the SBOM), as well as other sports through Recognition Agreements⁹⁷ and annual Sport Investment Agreements⁹⁸ administered by the ASC. The ASC requires through these agreements that all recognised and funded sporting organisations must comply with relevant parts of the National Policy, as well as with other sports governance principles.

5.2 REQUIREMENTS UNDER THE MACOLIN CONVENTION

The Macolin Convention (through Article 7) requires Parties to 'encourage' sporting organisations to implement policies and practices aimed at combating match-fixing. These include:

- prevention of conflicts of interest, including prohibiting competition stakeholders from betting on sports competitions in which they are involved

- establishment of an effective regime of sports sanctions for infringements against relevant anti-match-fixing policies
- a requirement for participants to report any suspicious activity, incident, incentive or approach which could be considered an infringement of the rules against the manipulation of sports competitions, with on-reporting to relevant authorities
- awareness raising among competition stakeholders, through education, training and the dissemination of information.⁹⁹

The Macolin Convention also requires parties (through Article 8) to develop and implement strategic mechanisms with respect to sports funding including:

- provision of funding to assist sporting organisations to combat match-fixing
- withholding financial support from participants sanctioned for involvement in match-fixing
- withholding financial support from sporting organisations that do not effectively apply anti-match-fixing policies developed and implemented by the sport.¹⁰⁰

5.3 WHICH SPORTS ARE MOST AT RISK?

Ultimately, the risk of match-fixing is greater for some sports – for example, those with greater liquidity in the betting markets available for their sport – than it is for others.

At present, there are 10 Australian NSOs that have 'opted in'¹⁰¹ to attain sports controlling body (SCB) status for their competitions and that as a consequence have established product fee agreements under the SBOM:

97 By which a sporting organisation is recognised as Australia's National Sporting Organisation (NSO) for the relevant sport.

98 Through which NSOs are funded by the Australian Government.

99 Council of Europe Convention on the Manipulation of Sports Competitions, opened for signature 18 September 2014, CETS No. 215a. 7.

100 Op. cit a. 8.

101 VCGLR, 'Sports Controlling Bodies', <<https://www.vcglr.vic.gov.au/gambling/wagering-and-sports-betting/sports-controlling-bodies>>, 15 December 2017.

- Australian Football League
- Basketball Australia
- Bowls Australia
- Cricket Australia
- Football Federation Australia
- National Rugby League
- Netball Australia
- Professional Golfers Association of Australia
- Rugby Australia
- Tennis Australia.

These are the sports that generally attract significant and highly liquid betting markets. While they stand to benefit most from wagering activity, they are also the ones that are at more risk of match-fixing.

Sports that do not attract highly liquid wagering markets with Australian licensed WSPs may nevertheless attract offshore wagering markets – including some with higher liquidity in offshore markets, although without access to the SBOM and product fees. They are also at risk of match-fixing, due to their lower visibility, particularly at subelite levels, and the lack, or limited, monitoring of relevant wagering activity.

We accept that the presence of a very limited wagering market for a particular sport can result in a significantly reduced risk for that sport, as can the nature of the sport itself (particularly individual sports that operate over a four-year Olympic or similar cycle at the elite level). Even though the risks of match-fixing are relatively low for medal sports, it is a positive that the Olympic, Commonwealth and Paralympic movements have acknowledged the existence of that risk and responded in developing appropriate measures to deal with it.

5.4 SPORTS' ADOPTION OF ANTI-MATCH-FIXING POLICIES AND PRACTICES

Many COMPPS sports, which represent the majority of the sports with highly liquid domestic betting markets, have invested heavily in establishing in-house integrity arrangements. They have also demonstrated a willingness to maintain an ongoing development of integrity capabilities, particularly in circumstances where investigations demonstrated that a stronger response is required.

For instance, following the conclusion of NSW Police's Strike Force NURALDA in October 2017, the NRL announced that it would allocate \$35 million

over coming years to build the capacity of its integrity unit. As part of this announcement, it was indicated that this money would be sourced from the revenue the NRL received through product fee arrangements under the SBOM.¹⁰²

COMPPS submitted that its member sports had implemented effective integrity measures in line with the national policy:¹⁰³

[E]ach of the Sports has established a sound foundation for addressing match-fixing that is consistent with best practice promoted globally by the International Olympic Committee and with the requirements of sporting organisations set out in the Australian National Policy on Match-Fixing in Sport agreed by State Attorneys General in 2011:

- Appropriate codes/policies proscribing a wide range of match-fixing related conduct and covering a wide range of sport participants including players, coaches, match officials, player agents and other support personnel
- Extensive and sport-specific education programs targeting all key participants in their sports
- The establishment of integrity units and appointment of integrity professionals including the ability to add investigation capacity to such units as required to fully and professionally investigate incidents of match-fixing
- Effective management of the enforcement processes contained within anti-corruption codes/policies (including through the appointment of highly qualified and independent tribunal members) so that offenders are prosecuted and, where applicable, appropriately sanctioned.

More information about these integrity arrangements and the kind of conduct they reach in the present context are set out in Attachment 2.

While recognising the significant integrity arrangements that have been introduced by COMPPS sports, in relation to possible match-fixing events, they are largely dependent on intelligence developed within and between their own integrity units together with advice from any fraud detection services with which they may have a contract. They do not necessarily have access to the wider intelligence concerning match-fixing activity

102 Read, B 'Gaming income to fund NRL watchdog', *Weekend Australian*, 28 October 2017.

103 Coalition of Major Professional and Participation Sports, *Submission 20*.

affecting other sports, which may be held by these sports, WSPs or law-enforcement agencies.

This we see as a weakness. A coordinated and well-informed capacity to respond to match-fixing across the board would, in our view, require the existence of a National Platform that can bring all the threads together.

Other sports have also been proactive in developing and implementing policies and procedures to combat match-fixing and related corruption, whether under SCB requirements through the SBOM, or through requirements for recognition and funding from the ASC. The majority of the sports that have implemented such arrangements have done so with the NISU, which has made available template integrity policies for sports to use and adapt for their specific needs. However, they suffer from the same weakness as the COMPPS sports in not having access to the wider intelligence held by other law-enforcement agencies.

The sports that are best placed to deal with match-fixing and related corrupt activity are obviously those with sufficient financial ability to establish an internal integrity capacity. Desirably, these sports will use income derived from product fee arrangements to support such capacity – although to what extent this is currently the case we were unable to ascertain.

However, there are a number of sports in Australia for which wagering markets exist that do not

have the financial resources needed to establish an internal integrity structure or to participate in the SBOM. This potentially leaves them at risk of match-fixing activity; that is, in the absence of support of the kind that could be delivered by the National Platform.

While the current settings with respect to NSO investment in integrity measures provide a basis for responding to match-fixing and related corruption, more needs to be done to deliver the objectives of the National Policy.

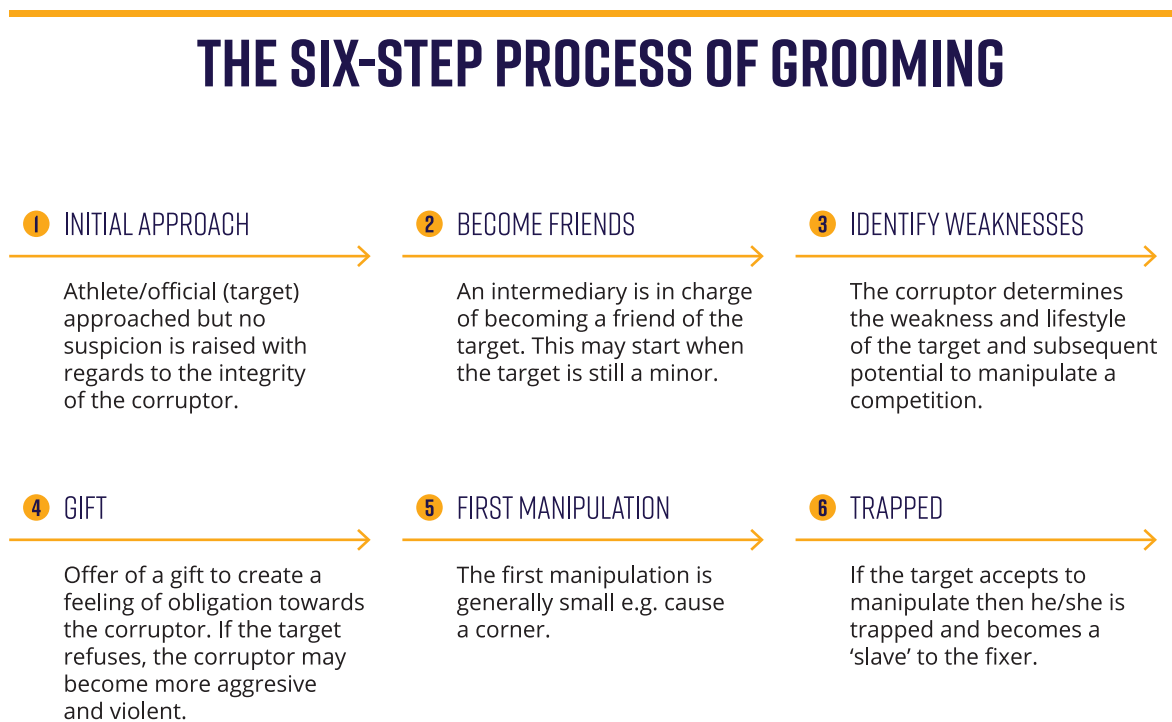
5.5 THE IMPORTANCE OF EDUCATION TO ADDRESS INTEGRITY RISKS

Effective education and training for athletes and other participants is a key requirement of sporting organisations under the National Policy, and a critical tool in the fight against match-fixing and related corruption. This is also recognised by the Macolin Convention (through Article 6).¹⁰⁴

It is fundamentally important that athletes and participants be educated about methods which might be used by criminal gangs to corrupt or compromise them, for example, with the intent of blackmailing them to manipulate a match. The following flowchart illustrating the process of 'grooming' (based on a similar diagram in the IOC-Interpol handbook on match-fixing)¹⁰⁵ identifies the factors of which athletes and participants must be aware to avoid being compromised.

104 Council of Europe Convention on the Manipulation of Sports Competitions, opened for signature 18 September 2014, CETS No. 215.
105 IOC and INTERPOL, 'Handbook on Protecting Sport from Competition Manipulation', May 2016.

Figure 4: The six-step process of grooming



Source: IOC and INTERPOL, 'Handbook on Protecting Sport from Competition Manipulation'

Consistent with its obligations under the National Policy, the NISU has assisted NSOs – particularly smaller NSOs – to provide anti-match-fixing education and training. In 2013, the NISU launched a free, comprehensive online course called 'Keep Sport Honest', which covers key learning areas including:

- the growth of sports betting and why match-fixing has become a significant threat to the integrity of sport
- how match-fixing can ruin careers and endanger lives
- how match-fixers may target athletes, officials and other relevant people
- how addictions can be a gateway to corruption
- how to protect athletes, officials and other relevant people from corruption, and their reporting requirements

- awareness of code of conduct requirements and other integrity tools
- support and counselling options.

The NISU requires those undertaking the program to provide personal details when they log in, which can then be cross-referenced by sports against their lists of relevant athletes and other participants to ensure that they have accessed the course.

Under the arrangements administered by the ASC and relevant state and territory regulators, and with assistance from NISU, NSOs, at least at the elite and professional levels, appear to be making efforts to administer anti-match-fixing education and training commensurate with the level of risk associated with their sport.

However, as with anti-doping education, there was concern among stakeholders that education and training regarding match-fixing and related corruption was lacking at subelite levels, generally due to a lack of sufficient funds, or was otherwise not as effective as it might be.

COMPPS shared this concern regarding education for participants at the subelite and amateur level.¹⁰⁶ There was also some concern expressed about a perceived lack of education and training specifically tailored to the needs of parents – particularly parents of ‘pathway’ athletes.

In our view, and as later outlined in this report, the enhanced impact and greater assistance sought by the sporting sector in relation to education could to a large extent be achieved through the co-location and coordination of existing education programs through a National Platform and become part of the functions vested in the proposed NSIC. The benefits of scale and expertise that could be built up within the proposed NSIC, including its capacity to deliver education and training appropriate for individual sports (which may have different risks), are in our view indisputable.

5.6 NEED FOR A CLOSER NATIONAL COLLABORATION

While the response of the Australian sports governing sector has generally been positive in relation to the objectives and expectations outlined above, it remains patchy, incomplete in some quarters, and lacking coordination.

To take the best advantage of the ASC funding and product fees provided through wagering agreements and the SBOM, we see considerable advantages in the establishment of a National Platform that could introduce greater order into the sports wagering market, support law enforcement through acting as a central intelligence repository, promote harmonisation of the response of states and territories to match-fixing related corruption, and adopt a positive role in relevant and contemporary education and training in that context for all sports.

The reasons for this and the structure proposed are further developed in Chapter 6.

6. CRIMINALISATION OF MATCH-FIXING

A key commitment under the National Policy agreed by Australian Governments in June 2011 was to:

'... pursue, through Attorneys-General, a consistent approach to criminal offences, including legislation by relevant jurisdictions, in relation to match-fixing that provides an effective deterrent and sufficient penalties to reflect the seriousness of offences. Governments note the approach to implementation of such provisions may vary in jurisdictions depending on existing legislative arrangements.'¹⁰⁷

A step towards the introduction consistent criminal sanctions was taken in November 2012 when all Australian Attorneys-General agreed to:

'... a set of match-fixing behaviours that legislative arrangements in each state and territory should cover, supporting a proposal to introduce specific match-fixing offences to cover the agreed behaviours, including a maximum of 7–10 years imprisonment.'¹⁰⁸

Unfortunately, a harmonised national approach to criminalising match-fixing remains lacking, with inconsistent match-fixing offences (or general offences purporting to cover match-fixing but arguably not doing so effectively) in force across states and territories. Clearly, it is time for the next major milestone – the enactment of provisions criminalising match-fixing and related corruption at the Commonwealth level.

6.1 CURRENT STATUS ACROSS AUSTRALIAN STATES AND TERRITORIES

There has been significant variation in the response of state and territory legislators to the November 2011 commitment.

New South Wales was the first to pass legislation criminalising match-fixing and related corrupt

conduct in 2012.¹⁰⁹ South Australia,¹¹⁰ Victoria,¹¹¹ the Northern Territory,¹¹² and the Australian Capital Territory¹¹³ followed in 2013, and Queensland¹¹⁴ in 2014.

Neither Western Australian nor Tasmanian governments have enacted specific legislation in response to the National Policy. These jurisdictions view the existing general fraud provisions as sufficient to deal with instances of match-fixing and related corruption. Tasmania Police submitted that:

The Criminal Code at section 253A provides a broad reaching ambit in respect of 'Fraud' and associated offences. This charge would appear to be sufficient to address activity such as match fixing. It should be noted however there has not been a prosecution of such in Tasmania and the legislation is untested in that sense.¹¹⁵

Although the Western Australia Police Force did not make a submission to the Review, in 2013 the Government of Western Australia indicated the Western Australian *Criminal Code Compilation Act 1913* and the *Gaming and Wagering Commission Act 1987* were considered to be sufficient to address the 'match-fixing behaviours' that had been identified in 2011.¹¹⁶

Even among jurisdictions that have enacted specific criminal provisions, there remain notable variations in those provisions. For instance, whereas the Australian Capital Territory, New South Wales, the Northern Territory, Queensland and South Australia criminalise betting with inside information, Victoria does not. An offence of corrupting the outcome of an event in New South Wales,¹¹⁷ the Northern Territory,¹¹⁸ Victoria,¹¹⁹ South Australia¹²⁰ and the Australian Capital Territory¹²¹ must be linked to betting outcomes, whereas in Queensland it is sufficient that such an act is committed for obtaining a pecuniary benefit, or causing pecuniary detriment to another.¹²²

107 Sport and Recreation Ministers' Council, 'National Policy on Match-Fixing in Sport' (as agreed on 10 June 2011) c. 3.4.

108 Department of Health, 'National Policy on Match-Fixing in Sport' (last updated 23 October 2013) <<http://www.health.gov.au/internet/main/publishing.nsf/Content/match-fixing>>.

109 *Crimes Amendment (Cheating at Gambling) Act 2012* (NSW).

110 *Criminal Law Consolidation (Cheating at Gambling) Amendment Act 2013* (SA).

111 *Crimes Amendment (Integrity in Sport) Act 2013* (Vic.).

112 *ACT Criminal Code (Cheating at Gambling) Amendment Act 2013* (ACT).

113 *Criminal Code (Cheating at Gambling) Act 2013* (NT).

114 *Criminal Code (Cheating at Gambling) Amendment Act 2014* (Qld).

115 Tasmania Police, *Submission 17*.

116 The Government of Western Australia made a submission in similar terms to the 2011 New South Wales Law Reform Commission review on Cheating at Gambling.

117 *Crimes Act 1900* (NSW) s. 193N.

118 *Criminal Code Act* (NT) s. 237H(b).

119 *Crimes Act 1958* (Vic.) s. 195C.

120 *Criminal Law Consolidation Act 1935* (SA) s. 144H.

121 *Criminal Code 2002* (ACT) s. 363F (b).

122 *The Criminal Code* (Qld) s. 443A.

More detailed information on the varying criminal offence provisions enacted in each state and territory is at Appendix A.

Some jurisdictions that have specifically enacted relevant criminal provisions have had success in investigating and prosecuting instances of match-fixing. Victoria Police, which is generally accepted as having a leading capability to investigate and prosecute sports corruption in Australia, indicated that Victorian 'cheating at gambling' legislation has been useful in tackling match-fixing and sports corruption from a Victorian perspective.¹²³

Victoria Police has utilised the new 'cheating at gambling' offences under the *Crimes Act 1958* (Vic.) since their implementation in April 2013, applying these provisions in six investigations and charging 17 individuals.

Legislation in New South Wales and Queensland has also been utilised with some success.

While there is a significant inconsistency between jurisdictions with respect to their relevant criminal provisions, all state and territory governments are committed to work together on anti-match-fixing initiatives. Illustrating this commitment is collaborative intelligence sharing, which has led to some successful cross-border investigations and prosecutions.

Tasmania Police noted that:

The advent of collaborative information sharing through the embedding of AFP, ABF and ACIC personnel within Serious and Organised Crime Division has resulted in greater visibility of other multi-jurisdictional investigations. This is further complemented by the rollout of the ACIC National Criminal Intelligence Systems which provides further awareness and de-confliction.¹²⁴

The following extract from Victoria Police's submission to our review provides an illustrative example of cross-border cooperation.¹²⁵

CASE STUDY – OPERATION OUTSHOUTS: TENNIS

In October 2013, the Victoria Police Sporting Integrity Intelligence Unit received information from the London-based Tennis Integrity Unit (TIU) (of the International Tennis Federation) and Tennis Australia and began Operation OUTSHOUTS, an investigation into match-fixing and betting corruption at Futures and Challenger level tennis tournaments. The suspicious matches were played in Toowoomba, Queensland, and Traralgon, Victoria. The investigation highlighted some of the difficulties in investigating and prosecuting match-fixing offences, particularly in a sport such as tennis where athletes are constantly travelling domestically and internationally.

However, the operation was a success. The key associate of the player involved was charged with using corrupt conduct information for betting purposes, and was convicted and fined in Victoria in December 2014. Due to cross-jurisdictional legal issues, the Victorian investigation was forwarded to New South Wales Police investigators, who interviewed and charged the player involved.

6.2 THE MERITS OF ESTABLISHING COMMONWEALTH CRIMINAL OFFENCE PROVISIONS

While the example above is encouraging, it is our firm view, based on the evidence and submissions provided to us, that the fact that some convictions have been achieved is not proof that the current arrangements suffice.

Match-fixing offences tend to be cross-jurisdictional or multijurisdictional due to major sporting competitions being national and international, and online wagering practices and telecommunications being borderless. It is easy to conceive of a situation in Australia (leaving aside the international context at this stage) where an athlete residing in New South Wales manipulates the outcome of a contingency in a match to be played in Western Australia with an associate living in Tasmania who places a bet online with a corporate bookmaker licensed in the Northern Territory.

123 Victoria Police, *Submission 34*.

124 Tasmania Police, *Submission 17*.

125 Victoria Police, *Submission 34*.

While this jurisdictional complexity is not insurmountable, when combined with an inconsistency in provisions across different jurisdictions, it can inhibit law-enforcement agencies in their investigation and prosecution of offences.

Jurisdictional complexity is obviously not limited to domestic cross-border issues. For example, in relation to the Ryan Tandy NRL case, while the match that was subject to the spot-fix was played in Townsville, bets relating to it were also placed in New Zealand. Far more complex situations can be envisaged where bets are placed from Australia with offshore bookmakers on fixed contingencies in matches occurring elsewhere in the world and involving Australian athletes. Laws to address transnational criminal activity are essential given that Australian athletes and officials compete or officiate in sporting competitions overseas, and the borderless nature of wagering services.

While New South Wales Police indicated its satisfaction with current arrangements,¹²⁶ other stakeholders were supportive of Commonwealth involvement.

Victoria Police in particular are supportive of the introduction of Commonwealth match-fixing criminal laws:

The Victorian 'cheating at gambling' legislation has been useful in tackling match-fixing and sports corruption from a Victorian perspective. However, for the numerous sport corruption matters investigated by the SIU, all have involved either cross-state jurisdictions and/or offenders offshore. Victoria Police therefore proposes that national legislation should also be considered to address the significant cross-border issues identified in prosecutions to date.¹²⁷

The Australian Federal Police share this view:

Legislation to deal with integrity matters that provide effective deterrent and sufficient penalties to reflect the seriousness of offences is still yet to be achieved. There are no Commonwealth laws that specifically deal with match-fixing. Most states and territories have legislation enabling them to commence prosecutions in regard to offences relating to their own jurisdiction, [however,] due to the global nature of sport, there is a requirement for extended geographical jurisdiction to be included in legislation to extend offences and powers in regard to offenders and evidence located off-shore and impacting on Australia.¹²⁸

Tasmania Police also recognised the value of national leadership in this regard:

The issue of investigative responsibility is a complex one with states unlikely to have the capacity to undertake multi-national complex sports betting investigations. The responsibility for leading these investigations appears to sit at the Commonwealth level.¹²⁹

COMPPS also indicated its ongoing support for enacting national match-fixing offences:

There are gaps and inconsistencies in the legislation that has been adopted pursuant to the Policy. It is essential that all states and territories adopt legislation that is consistent and does not create loopholes that result in inconsistencies between jurisdictions. The current situation provides anomalies that result in conduct being caught by the criminal law in one jurisdiction but not in another.

The multiplicity of jurisdictions does not work. We recommend a national system.

We see merit in the Australian Government considering the potential of measures, such as the Macolin Convention, which might permit federal match-fixing legislation and regulation of gambling. This is discussed further in Objective 5. Such legislation would address some of the cross-jurisdictional challenges faced by police investigations if supported by appropriate policing resources and would iron out some inconsistencies that exist because of the uneven application of match fixing legislation across states.¹³⁰

126 The Panel consulted with NSW Police on 13 September 2017.

127 Victoria Police, *Submission 34*.

128 Australian Federal Police, *Submission 22*.

129 Tasmania Police, *Submission 17*.

130 Coalition of Major Professional and Participation Sport, *Submission 20*.

We agree. In our view, the preferable approach would be for the Australian Government to enact provisions criminalising match-fixing and related corruption to ensure consistency in their application across all Australian jurisdictions, as part of a cohesive, national response to match-fixing and related corruption.

We are also firmly of the view that state and territory governments should be encouraged, on an ongoing basis, to enact specific criminal offences relating to match-fixing and related corruption where this has not occurred, and to seek harmonisation of provisions where this would help. For instance, the Victorian Government could usefully consider enacting provisions which criminalise the use of inside information in the context of sports wagering in a form that would be consistent with the provisions in force in the other jurisdictions. In this respect, as we note later, it may still be important for state and territory criminal laws to be employed that will enable offenders to be prosecuted for the ancillary offences that can be associated with match-fixing. Mutual recognition can be useful in this respect.

In summary, ensuring consistency across all jurisdictions will enable more effective policing and prosecution, and will also avoid jurisdictional challenges to the manner, and state or territory, in which a charge may be brought.¹³¹

RECOMMENDATION 2

That the Australian Government establish national match-fixing offences similar to those in New South Wales, while continuing to encourage national consistency in relevant criminal provisions introduced by state and territory governments.

6.3 REQUIREMENTS OF THE MACOLIN CONVENTION

Article 15 of the Macolin Convention provides that:

Each Party shall ensure that its domestic laws enable to criminally sanction manipulation of sports competitions when it involves either coercive, corrupt or fraudulent practices, as defined by its domestic law.¹³²

The Macolin Convention also requires that aiding and abetting in the commission of such offences be criminalised,¹³³ that provision be made for legal persons to be held liable for such,¹³⁴ and that such offences be included in domestic legislation among those predicate to subsequent offences relating to dealing with proceeds of crime (money laundering).¹³⁵

The Macolin Convention is not prescriptive with respect to the implementation of criminal offence provisions. As noted in the explanatory report accompanying the Macolin Convention, 'It does not require the establishment of a specific and uniform offence for the manipulation of sports competitions.'¹³⁶ However, at its most fundamental level, to be consistent with the Macolin Convention criminal sanctions must bear some relationship to the definition of 'manipulation of sports competitions' in the Convention, namely:

'... an intentional arrangement, act or omission aimed at an improper alteration of the result or the course of a sports competition in order to remove all or part of the unpredictable nature of the aforementioned sports competition with a view to obtaining an undue advantage for oneself or for others.'¹³⁷

The legislation that we propose would comply with this expectation.

131 Victoria Police, *Submission 34*.

132 Council of Europe Convention on the Manipulation of Sports Competitions, opened for signature 18 September 2014, CETS No. 215 a. 15.

133 *op. cit.*, a. 17.

134 *op. cit.*, a.18.

135 *op. cit.*, a. 16 – specifically in relation to (in the case of Australia) Article 6, paragraph 1 of the United Nations Convention against Transnational Organized Crime (2000).

136 Council of Europe, 'Explanatory Report to the Council of Europe Convention on the Manipulation of Sports Competitions', 18 September 2014, p. 130.

137 Council of Europe Convention on the Manipulation of Sports Competitions, opened for signature 18 September 2014, CETS No. 215 a. 3.4.

6.4 DRAFTING COMMONWEALTH CRIMINAL PROVISIONS

Maximising the potential deterrence effect of the proposed provisions will require that offence provisions are calibrated such that they reach across the variety of behaviours that are associated with match-fixing and related corruption; and enable the use of sufficient law-enforcement powers to support effective detection, investigation and prosecution.

We have consulted widely in this regard and consider the joint IOC and UNDOC Model Criminal Law Provisions for the Prosecution of Competition Manipulation¹³⁸ to be particularly instructive.

As noted in Recommendation 2 above, we have formed the view that the current 'Cheating at Gambling' provisions found at Part 4ACA of the *Crimes Act 1900* (NSW) serve as a good foundation for the development of Commonwealth criminal offence provisions.

In our view, the proposed offences should be formulated so as to:

- have a national and possible international application
- be linked to wagering outcomes, irrespective of whether the bet was lawful
- include offences for the use of inside information
- be calibrated so as to enliven the possibility of using telecommunications interception powers and to allow sufficient sentencing discretion
- be calibrated so as to ensure that any applicable time limit for commencement of proceedings will not interfere with reasonably conducted investigations of the type required.

COMMONWEALTH OFFENCE PROVISIONS TO HAVE TRANSNATIONAL APPLICATION

Given that match-fixing and related corruption are increasingly international, Commonwealth-level offence provisions will be particularly useful for policing and prosecuting match-fixing offences that have a transnational involvement. As noted by the AFP:

[D]ue to the global nature of sport, there is a requirement of extended geographical jurisdiction to be included in legislation to extend offences and powers in regard to offenders and evidence located off-shore and impacting on Australia.¹³⁹

AFP indicated in our consultation that while transnational policing requires the existence of concomitant criminal offence provisions to enable law-enforcement investigations, most countries in Europe are in the process of enacting such criminal offences under the guidance of the Macolin Convention. It also indicated that the involvement of international policing organisations (including INTERPOL) in match-fixing investigations throughout Asia was providing an effective encouragement for the enactment of similar legislation throughout our region.

ACIC, AFP and Victoria Police also supported the drafting of Commonwealth criminal offence provisions that would allow for the prosecution in Australia of offences committed by Australians overseas. In our view, Commonwealth criminal offence provisions regarding child exploitation and sex tourism provide an effective framework for the drafting of provisions that will have the required reach.¹⁴⁰

LINKING MATCH-FIXING OFFENCES TO WAGERING OUTCOMES

We accept that not all match-fixing/competition manipulation or related corrupt conduct is related to wagering outcomes. A match may be manipulated by a team for the purposes of seeking a better draw, or to assist in an end of the season draft, or to improve or retain a ranking in a sport with a divisional structure; or by a player who is influenced to lose a game in exchange for a promise to play for another team the following season.¹⁴¹

The Macolin Convention contemplates a broad definition of match-fixing involving manipulation for the purposes of 'obtaining an *undue advantage* for oneself or for others'¹⁴² [emphasis added], and the IOC and UNODC, in their Model Criminal Law Provisions¹⁴³ encourage states to distinguish between match-fixing and bet-fixing, allowing the first to be broad enough to capture non-betting related match manipulation:

138 United Nations Office on Drugs and Crime, IOC, 'Model Criminal Provisions for the Prosecution of Competition Manipulation' (June 2016).

139 Australian Federal Police, *Submission 22*.

140 See Attorney-General's Department, 'Child sexual exploitation', accessed 9 January 2018, <<https://www.ag.gov.au/CrimeAndCorruption/CrimePrevention/Pages/Child-sexual-exploitation.aspx>>.

141 Council of Europe, 'Explanatory Report to the Council of Europe Convention on the Manipulation of Sports Competitions', 18 September 2014.

142 Council of Europe Convention on the Manipulation of Sports Competitions, opened for signature 18 September 2014, CETS No. 215. a. 3.4.

143 United Nations Office on Drugs and Crime, IOC, 'Model Criminal Provisions for the Prosecution of Competition Manipulation', June 2016.

‘In order to ensure the highest efficiency possible in the fight against match-fixing, and for consistency with the objectives of the Convention against Corruption and of the Macolin Convention, it is recommended that the match-fixing offence be independent from betting on a sports event or competition which is fixed.’

However, it is important at this time to draw a distinction between conduct that is punishable under the Criminal Law, and that which is more properly dealt with by sporting organisations themselves. As noted by the IOC and UNODC in their joint ‘Study on Criminal Law Provisions for the Prosecution of Competition Manipulation’:¹⁴⁴

‘Provided that it is applied in line with legal constraints, the disciplinary power of sports institutions constitutes a fast and efficient coercive tool against the manipulation of sports competitions.’

Victoria Police also noted the effectiveness of sport sanctions as a deterrent for athletes to engage in non-betting related match-fixing:

Victoria Police notes that the follow-on civil investigation by the sporting code after a criminal investigation is a key element in tackling match-fixing and securing prosecutions. While criminal penalties may have a minimal impact on some sport participants, the charged person can be either banned for life or given a career ending disqualification period through sporting code sanctions.¹⁴⁵

We agree, particularly given the maturity and sophistication of the sporting integrity arrangements that have been introduced by the major professional sports, and the current (and future) role of the Australian Government in developing and ensuring consistency across sports’ match-fixing policies.

Given this, our view is that the scope of Commonwealth criminal offence provisions should be limited at this time to conduct which is specifically linked to corrupting wagering outcomes, with match manipulation for other purposes best dealt with through the rules of the sport (with appropriate support and oversight from the proposed NSIC).

This will be broadly consistent with the NSW ‘Cheating at Gambling’ provisions. However, the NSW provisions are specifically limited to conduct that corrupts the betting outcome of an event or an event contingency ‘on which it is lawful to bet under a law of [New South Wales], another State, a Territory, or the Commonwealth’.¹⁴⁶ In our view, Commonwealth criminal provisions should be drafted without this requirement. There is an identifiable risk that retaining such provisions would limit reach, particularly for wagers placed with offshore online platforms, or with onshore providers who may have (whether deliberately or inadvertently) offered a market on a contingency that has not been approved as a result of an agreement between the relevant SCB and WSP. In our view, this should be avoided.

OFFENCES WITH RESPECT TO THE USE OF INSIDE INFORMATION

Each of the jurisdictions with specific match-fixing or cheating at gambling criminal offence provisions have outlawed the use of inside information, other than Victoria. In our discussions with Victoria Police this was noted as a shortcoming of the Victorian criminal offence provisions and should be included in any Commonwealth legislation. Whether the supply or use of inside information can be brought within the general fraud provisions in Tasmania or Western Australia remains unclear.

In our review of recent instances of match-fixing and corrupt conduct, it appears that the communication and use of inside information has often been present. Also, a number of relevant stakeholders expressed a concern about this type of conduct as a ‘gateway’ to more serious offending – in that an athlete or support person might easily communicate inside information to criminal elements as part of the ‘grooming’ process, and later find themselves coerced into more serious match manipulation or related corrupt conduct.

Offences for the communication and use of inside information are of key importance to ensure that the criminal offence regime is as effective as possible.

PENALTY REGIMES FOR INSIDE INFORMATION OFFENCES

It will also be critical for inside information offences to be associated with a penalty regime that reflects the spectrum and seriousness of the offending that may be involved. Some relevant stakeholders indicated that high penalties could leave law enforcement reluctant to charge athletes with inside information offences in circumstance where

144 Ibid.

145 Victoria Police, *Submission 34*.

146 *Crimes Act 1900* (NSW) s. 193J.

information may have been passed on to a friend or relative without any criminal intent – diminishing the potential deterrent effect of the offence provision.

Conversely, where an athlete or official systematically and consistently participates in conduct which would engage the inside information offence provision, we do not view current penalties in most jurisdictions as sufficient.¹⁴⁷

To account for the range of offending that may be caught by the inside information offence, we would prefer an approach that develops a flexible penalty regime and allows for the availability of a pecuniary penalty range in association with a specified maximum term of imprisonment. There might usefully be an aggravated form of the offence where the communication or use of the inside information was part of a systematic or consistent engagement in such conduct – essentially separating out what might be inadvertent or reckless offenders from those who are in the business of releasing or abusing inside information.

AVAILABILITY OF TELECOMMUNICATIONS INTERCEPT POWERS AND LIMITATION FOR COMMENCING PROCEEDINGS

Stakeholders also expressed frustration about the penalty regime for inside information offences in some jurisdictions – indicating that current settings often resulted in enhanced police powers including telecommunication interception being unavailable to police during an investigation, and gave rise to shorter limitation periods within which to commence proceedings, that did not allow sufficient time for what can be lengthy or complex investigations.

The Commonwealth criminal offence provisions should be calibrated so that the sentence of imprisonment available for each of the offences proposed (including aggravated inside information offences) is sufficient to enable the use of telecommunications interception, and of surveillance devices, and to allow access to stored communications data and data surveillance.

Further, the provisions should be calibrated such that the statutory time for start of proceedings does not interfere with reasonably executed investigations. This has been an issue in NSW, where inside information offences are summary offences and proceedings must be commenced within six months after the commission of the offence.

This would not appear to be a problem for the Commonwealth offences that we propose. Under Commonwealth law, proceedings can be commenced at any time where the maximum penalty which may be imposed for an offence in respect of an individual is, or includes, a term of imprisonment of more than six months.¹⁴⁸

WHETHER FAILURE TO DISCLOSE KNOWLEDGE SHOULD BE AN OFFENCE

Victoria Police submitted that the proposed legislation should criminalise the failure of a person with knowledge of a match-fixing event to disclose that knowledge to police or other relevant authority.¹⁴⁹ We acknowledge the need for encouraging the disclosure by any person of any information in their possession concerning a planned fixed event or contingency, or of its commission. However, we are not in favour of introducing a specific provision, for several reasons.

In some instances, conduct of this kind could amount to and be punishable as an offence of concealing a serious (or other) indictable offence, under current laws. Taken further, there is a danger that, out of fear of prosecution, it might dissuade people who have relevant but undisclosed knowledge to cooperate voluntarily with post-event investigations or to act as a whistleblower.

In cases where the potential informant is subject to a contractual obligation, under an agreement with a SCB, to disclose knowledge of this kind or to assist with investigations, then, in our view, a breach of that obligation would be better addressed by the sport as a violation of its integrity code than as a criminal offence in its own right.

We also do not see the public interest, in this context, as justifying what might be seen as an exceptional response that is not available in other areas of criminal conduct.

WHETHER UNAUTHORISED DATACASTING SHOULD BE UNLAWFUL

Victoria Police brought to our notice a concern regarding the transmission of live data by data scouts from venues and stadiums.¹⁵⁰ Datacasting is not to be confused with court-siding, where live information is transmitted from sporting events to allow recipients to place live wagers by taking advantage of the time delays between live action and television broadcasts.

147 In most jurisdictions that have inside information offences, these are summary offences, carrying a maximum of only two years (compared to the match-fixing offences which carry a maximum of 10 years in most jurisdictions).

148 *Crimes Act 1914* (Cth) s15B(1)(a).

149 Victoria Police, *Submission 34*.

150 *Ibid.*

Rather, data scouts are paid to attend sporting events to transmit live data (either through audio or mobile phone or other devices) for provision to WSPs to assist them in offering wagering markets on the event.

Whether an offence should be created in the criminal code or in the *Interactive Gambling Act* or any legislation enacted to establish the Australian Sports Wagering Scheme (detailed below) to deal with datacasting activities that might facilitate sports corruption is contentious. A number of issues arise, including practical enforcement of such a provision, and any justification for it in circumstances where major events, at least, are subject to live streaming and public broadcasting.

At this stage, we consider that the possibility of criminalising any aspect of datacasting should await an examination of any initiatives that may be developed internationally and be subject to monitoring by the proposed NSIC.

RECOMMENDATION 3

That Commonwealth criminal offences be formulated such that:

- offence provisions have transnational application
- match-fixing offences be linked to wagering outcomes, irrespective of whether said wager would have been otherwise lawful
- provisions include offences for the use of inside information
- offence provisions (including for sentencing) are calibrated such as to enliven the possibility of using telecommunication intercept powers
- offence provisions are calibrated such as to ensure that any applicable time limit for start of proceedings will not interfere with reasonably conducted investigations of the type anticipated.

6.5 ANCILLARY CRIMINAL RESPONSIBILITY

Framed in the way suggested, a Commonwealth offence will also engage ancillary criminal responsibility for accessorial conduct. Federal and state or territory legislation may also be engaged (depending on the locus of the offending and jurisdiction where charges are laid) to prosecute associated criminality. This could include conduct preparatory to the match-fixing offence, involving conspiracy, blackmail, extortion, engagement in organised criminal activity, attempt, incitement, and so on, as well as money laundering.

Although conceivably a grooming offence could be included, we consider that this would involve something of an overkill and do not propose its inclusion as a Commonwealth offence, particularly as attempt and incitement charges could be available, or resort had to consorting laws to break up inappropriate associations.

7. REGULATION OF SPORTS WAGERING

The second of the two major reforms anticipated by the National Policy was directed at sports wagering regulation. The National Policy anticipated the establishment of a system of tripartite cooperative partnership between sporting organisations, wagering service providers, and state and territory regulators, to be underpinned by nationally consistent wagering legislation introduced and implemented at the state and territory level – the Sports Betting Operational Model (SBOM).

The intended purpose and underlying principles of the SBOM are broadly consistent with relevant requirements of the Macolin Convention, including, in particular, Article 9 which relates to 'Measures regarding the betting regulatory authority or other responsible authority or authorities',¹⁵¹ and Article 13, which relates to the identification and responsibilities of a National Platform for the coordination of the fight against the manipulation of sports competitions.¹⁵²

However, the SBOM, agreed as part of the National Policy in 2011, has not been fully implemented, creating regulatory complexity, unnecessary costs in compliance and uncertainty for stakeholders in the regulation of sports wagering in Australia (for more details see Appendix A). However, even if fully implemented, the SBOM would not be adequate to address the challenges of the current threat environment.

To address the current problems, we propose in this chapter a revised system of sports wagering regulation at the national level – the Australian Sports Wagering Scheme.

7.1 CURRENT REGULATION OF SPORTS WAGERING – THE SBOM

A key functional element of the SBOM – the system of cooperative partnership between sporting organisations and WSPs – is formalised between sports and WSPs through 'product fee and integrity agreements' (PFIAs).

PRODUCT FEE AND INTEGRITY AGREEMENTS

Under the SBOM, a WSP seeking to provide sports wagering services relating to an Australian sporting event must have in place a PFIAs with the relevant SCB (if a controlling body is identified) which relates to that particular event, and details the contingencies that can be offered as part of the approved market for that event.

The key characteristics of the PFIAs are:

- SCBs determine which events, and which contingencies associated with those events, are authorised for wagering services by licensed WSPs.
- WSPs and sports are required to share relevant information to help prevent the manipulation of sports competitions (and related corruption) – for example, sports will provide details of players, officials and support personnel to WSPs to assist in the detection of participants seeking to place wagers on their own sport.
- WSPs provide information of suspicious betting (and other) activities to sports for investigation and vice versa.
- WSPs provide a negotiated financial return to the sport (generally a percentage of revenue or turnover) – a product fee – intended to assist with the costs associated with maintaining the integrity of the sport.

151 Council of Europe Convention on the Manipulation of Sports Competitions, opened for signature 18 September 2014, CETS No. 215 a.9.
152 Op. cit., a. 13.

THE SPORTS WAGERING LEGISLATIVE FRAMEWORK

The second element of the SBOM is the underlying legislative framework, which all Australian governments agreed to enact under the National Policy to give the PFIA system the necessary statutory foundation. It was intended that the statutory framework would:

- mandate, as a condition of the provision of wagering on sports, the existence of a PFIA relevant to the particular sport and event
- establish a process whereby sporting organisations can be designated as SCBs, including integrity criteria that must be satisfied, and provide that *only* SCBs may enter into PFIAs
- provide a system for protecting the integrity of sports competitions and regulating the provision of wagering markets where no SCB has been designated
- provide for regulatory approval of agreements between SCBs and WSPs regarding wagering on sporting events and bet types
- adjudicate, if needed, between SCBs and WSPs.

The SBOM places the PFIAs and sports integrity at the centre of the sports wagering regulatory framework, and ensures that WSPs and sports retain critical responsibility for maintaining the integrity of sport and sports wagering.

DESIGNATION AS A SPORTS CONTROLLING BODY

Under the SBOM, it was anticipated that gambling regulators in each state and territory would be responsible for determining applications made by sporting organisations to be designated as SCBs in relation to the events (or class of events) that they control. Criteria that must be satisfied for designation as the SCB for an event include:

- that the applicant sporting organisation controls the event that is the subject of the application
- that the sporting organisation has appropriate integrity measures in place.

Following the designation of an SCB for an event, the SCB would then be empowered to authorise wagering on particular contingencies within the event – applying its knowledge of the sport in question to determine which contingencies, if any, might be offered in the Australian market without posing an undue risk of competition manipulation.

7.2 IMPLEMENTATION OF THE SBOM

New South Wales and Victoria are the only jurisdictions which have enacted relevant legislation to give effect to the SBOM.¹⁵³ A key factor that has been holding the implementation of the SBOM together to date is the combination of attractive commercial conditions for online corporate WSPs to become licensed in the Northern Territory (most corporate bookmakers now being licensed there), and the decision of the Northern Territory Government to implement the guiding principles of the SBOM in WSP licensing conditions. However, as our inquiries revealed, this gives rise to an incomplete, patchwork system with which sports and WSPs are not satisfied.

Many WSPs have voluntarily adopted a national approach to engaging with SCBs to establish PFIA arrangements. Tabcorp, which through a recent corporate merger is now part of an enterprise controlling all Australian TABs (and therefore all retail wagering) other than in Western Australia, has adopted such a national approach. Tabcorp observed that if its competitors (i.e. the online corporate WSPs) do not take the same approach, there may be an enforcement gap which has the potential to undermine the powers of the SCBs. Tabcorp welcomed national consistency in this area.¹⁵⁴

COMPPS also submitted to us that:

We seek legislation through which each Sport would be appointed as the SCB in each Australian jurisdiction in which their sport is played or wagered on. This would strengthen the authority of Sports in jurisdictions where SCB status is not currently conferred, and in which Sports must rely on purely voluntary contractual arrangements with wagering providers to exert influence on their markets, enforce integrity information sharing and secure an appropriate product fee.¹⁵⁵

153 Further detail regarding the implementation of the SBOM by states and territories and about the regulation of sports wagering generally is in Appendix A.

154 Tabcorp, *Submission 29*.

155 Coalition of Major Professional and Participation Sports, *Submission 20*.

SPORTS' AUTHORISATION OF ALLOWABLE CONTINGENCIES

Some stakeholders expressed the view that the current self-regulation arrangements between WSPs and SCBs through PFAs lead to an inherent conflict of interest, and that sports integrity would be better served through government regulation of authorised wagering markets on sporting competitions.¹⁵⁶

A benefit of ceding control over the authorisation of sports wagering contingencies to SCBs is that they are able to apply their own knowledge and expertise in relation to their sport in assessing the existence and nature of any integrity risks for particular events or contingencies. COMPPS noted that the current system has the support of its relevant international federations:

International Federations are also supportive of the ability for SCBs to dictate the events and the bet types that Australian betting operators can offer markets. This limits the integrity risk associated with match fixing and corrupt practices.¹⁵⁷

Nevertheless, current mechanisms for the assessment and approval of types of wagers offered on sport in Australia (or involving athletes representing Australia) are not entirely satisfactory, and can give rise to a real or perceived conflict of interest for sporting organisations. This arises from the fact that the size of the product fees that are payable are related to the number of contingencies for which wagers are approved, and on which revenue is earned.

SCB DEVELOPMENT OF INTEGRITY MECHANISMS

Facilitated through the receipt of product fees under PFA arrangements, another objective of the SBOM was the investment of SCBs in developing and implementing integrity policies and procedures. So long as sports wagering is allowable, then it is desirable that sports do benefit from it, and that product fees should be applied to support integrity procedures.

7.3 NATIONAL OVERSIGHT OF SPORTS WAGERING – THE AUSTRALIAN SPORTS WAGERING SCHEME

It is clear that the National Policy and constituent SBOM have the potential to enhance the protection of Australian sports integrity.

However, given the incomplete implementation of the National Policy, and the existing regulatory complexities, it is important that the regulation of sports wagering in Australia now be centrally administered to ensure a greater level of national transparency, consistency, reliability and certainty of outcomes and standards.

We recommend a system of national sports wagering regulation – the Australian Sports Wagering Scheme (ASWS) – which will bolster sports integrity measures while simplifying the current SBOM system, including the approval of SCB status and authorisation of sports wagering contingencies.

The ASWS which we propose would have minimal impact on state and territory regulation of wagering in the broader sense – much in the same way that Commonwealth regulation of online gambling through the IGA has minimal effect on jurisdictional regulation of gambling in the broad.

It is envisaged that under the ASWS, WSPs would continue to be licensed under a state or territory regulatory regime, and participate in the ASWS so as to be eligible to provide wagering services for Australian sporting competitions. In this respect, it would only regulate the authorisation of licensed WSPs to provide wagering services on *sports*, and have no impact on the regulation of any other type of wagering. As such, it would have little impact on state and territory licensing schemes or the revenue that jurisdictions derive from gambling services.

Central regulation would also be consistent with and supported by the Macolin Convention, to which we consider Australia should become a party, including Article 9 (on measures regarding the betting regulatory authority), Article 10 (on sports betting operators) and Article 12 (on the importance of facilitating information sharing).

¹⁵⁶ For instance, it was suggested that, as SCBs receive fees from WSPs based on betting volume (whether by profit or turnover), it may be in an SCB's interest to determine in favour of allowing additional betting markets, notwithstanding any integrity issues.

¹⁵⁷ Coalition of Major Professional and Participation Sports, *Submission 20*.

We propose that the ASWS be administered by the proposed National Platform (which we consider should come within the proposed NSIC) with regulatory powers and functions to facilitate, through the administration of sports wagering regulation, the centralised collection of sports wagering data, information and intelligence as anticipated by the Macolin Convention; as well as the approval of SCBs and SWSPs for the purposes of the scheme, and the approval of contingencies on which wagering would be allowable.

RECOMMENDATION 4

That the regulation of sports wagering become subject to an Australian Sports Wagering Scheme to streamline current processes and to provide clarity, transparency and consistency of the regulatory regime at a national level, with regulatory responsibilities to sit within the proposed National Platform.

7.4 AUSTRALIAN SPORTS WAGERING SCHEME – OPERATION

The ASWS as proposed would have similar characteristics to the SBOM under the National Policy, but with enhanced integrity capabilities, including powers that will help to ensure that Australia's regulatory settings are sufficient to meet the evolving nature of the threats to sports integrity.

Modelled on the SBOM, many aspects of the ASWS will be familiar to stakeholders. The ASWS would:

- continue to support close and effective engagement of sporting organisations and WSPs through agreements similar to the current PFIsAs
- ensure that sports continue to receive fair recompense for their product
- respect existing arrangements for the licensing of WSPs in states and territories.

The ASWS would streamline and simplify the complex regulatory system that currently governs sports wagering across Australia (See also Figure 5) by centralising:

- the approval/certification process for NSOs to be recognised as SCBs, taking into account the current arrangements whereby Australian sports are recognised and deemed eligible for government funding
- the approval process whereby licensed WSPs are recognised as 'sports wagering service providers' (SWSPs) eligible to enter into PFIsAs
- the regulation of the supply of sports wagering through the assessment and scheduling of authorised sports wagering contingencies.

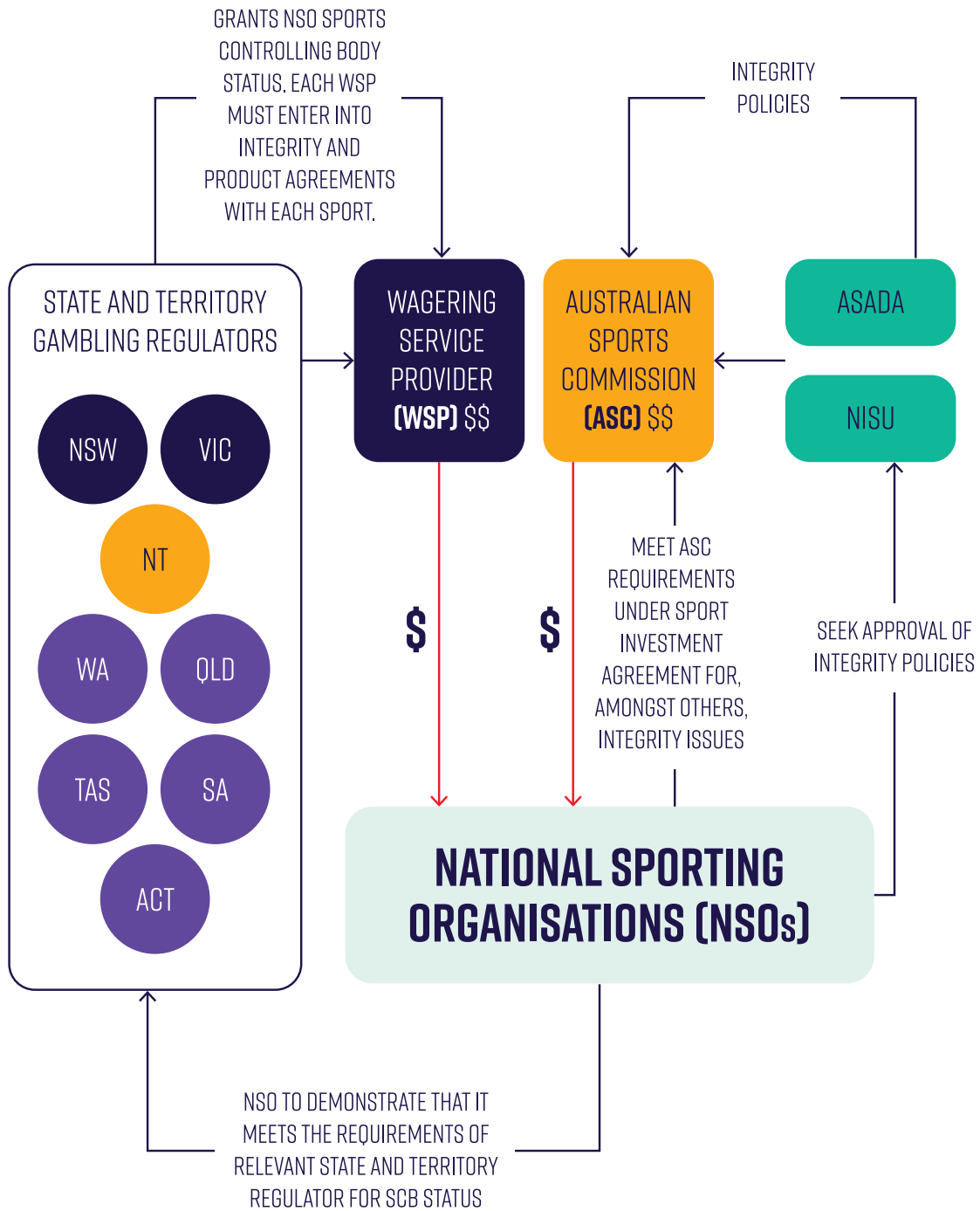
The ASWS would enhance the integrity of sports wagering in Australia by:

- mandating the exchange of information between SWSPs, SCBs and the National Platform, formalising the flow of information to and from the Sports Betting Integrity Unit (SBIU)
- establishing and requiring SWSP participation in an early-warning Suspicious Activity Alert System (SAAS) for suspected sports wagering fraud.

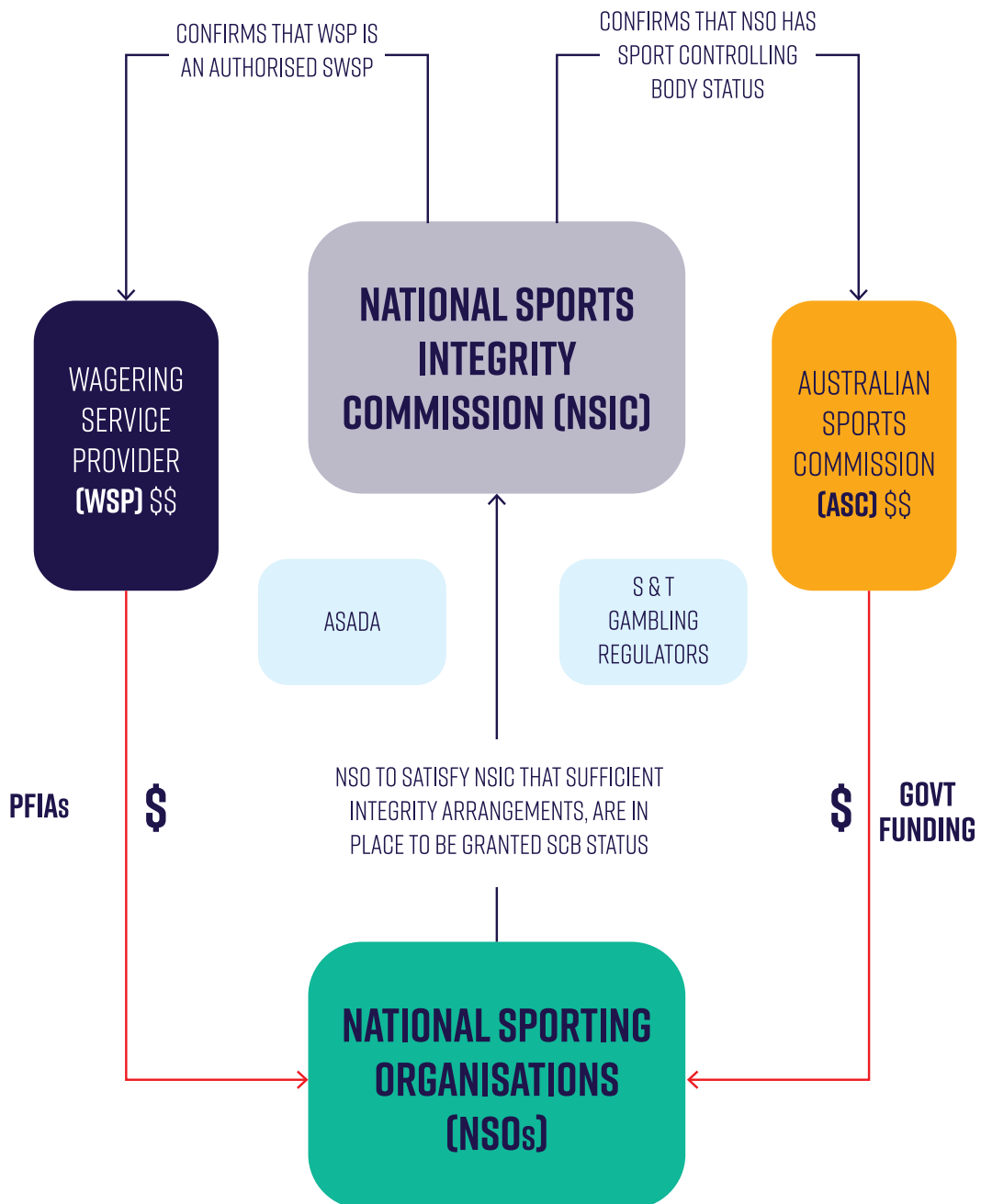
The ASWS, administered through the National Platform, would bring together a range of stakeholders with relevant expertise to assist in regulatory activities. This would include, for the first time, dedicated representation of relevant Commonwealth agencies including ACIC, ACMA, AFP, ASADA, ASC, and NISU (noting that the current roles and responsibilities of the NISU are envisaged as becoming part of the proposed NSIC). The National Platform would necessarily also collaborate closely with state and territory gambling regulators.

Figure 5: Current and proposed regulatory requirements

CURRENT SCB/WSP REGULATORY ARRANGEMENTS



PROPOSED SCB/WSP REGULATORY ARRANGEMENTS (AUSTRALIAN SPORTS WAGERING SCHEME)



RECOMMENDATION 5

That the Australian Sports Wagering Scheme (ASWS) give full effect to the operational model for sports betting anticipated in the National Policy, including requirements for information and intelligence gathering and sharing by sporting organisations and Wagering Service Providers (WSPs). Through the ASWS, the National Platform is to be responsible for:

- assessing and declaring, as appropriate, National Sporting Organisations as Sports Controlling Bodies for the purposes of the ASWS and to be eligible to enter into product fee arrangements
- assessing and declaring WSPs, otherwise licensed as a wagering service provider in a state or territory, as a 'sports wagering service provider' for the purposes of the ASWS, and to be authorised to offer markets on Australian sport.

RECOMMENDATION 6

That the administration of the Australian Sports Wagering Scheme, particularly for the assessment of applications from NSOs and WSPs for relevant recognition, be such as to bring together a range of expertise including from the Australian Criminal Intelligence Commission, Australian Communications and Media Authority, Australian Sports Anti-Doping Authority, Australian Sports Commission, and National Integrity of Sport Unit to ensure that a robust system of integrity oversight, monitoring and compliance is in place.

7.5 SPORTS CONTROLLING BODY STATUS

We propose that SCB status, applied for by NSOs and assessed and designated by the National Platform, be determinative for:

- eligibility to participate in the ASWS (and therefore eligibility to enter into product fee arrangements with SWSPs)
- eligibility, at least for sports integrity requirements, to enter into Australian Government Recognition Agreements (RAs) and Sports Investment Agreements (SIAs) with the ASC.

Similar to the current requirements of SCB status contained within the New South Wales and Victorian regulatory regimes, we propose that SCB status be conditional, that is, subject to sporting organisations:

- establishing and implementing integrity policies and systems against a minimum standard, and maintaining ongoing compliance with these policies
- incorporating, as part of the above requirement, policies that engage the jurisdiction of the proposed National Sports Tribunal (at least for anti-doping, unless the sport has opted out – discussed further in Chapter 5)
- complying with mandatory integrity threat reporting requirements.

The National Platform would be ideally placed to assess applications for SCB status and to monitor ongoing compliance with the above requirements, including through periodic reviews of ongoing eligibility for SCB status. The National Platform would also have capacity to help SCBs meet required integrity standards.

The system of regulating SCB status which we propose would comply with Articles 7 and 8 of the Macolin Convention regarding the regulation and financing of sports organisations. It would also assist in the audit procedures (discussed elsewhere in this report) relating to overall sports governance monitoring responsibilities, and as a basis for ongoing government recognition (through RAs) and funding of sporting organisations (through SIAs).

Consequently, we propose that SCB status, applied for by sporting organisations, and assessed and determined by the National Platform, be a mandatory precondition of eligibility to enter into RAs and SIAs through the ASC.

We anticipate that these arrangements would result not only in strengthened integrity settings, but also in a reduced administrative burden for sporting organisations and WSPs. By combining ASWS eligibility with the assessment of integrity measures for the purposes of RA and SIA eligibility, sports will only be required to engage with one entity – the National Platform – for integrity issues.

RECOMMENDATION 7

That Sports Controlling Body recognition from the National Platform, involving an assessment of the sufficiency of the integrity policies and procedures implemented by National Sporting Organisations (including anti-doping policies, anti-match-fixing policies and engagement, where appropriate, of the jurisdiction of the National Sports Tribunal), be a prerequisite for government funding and recognition.

7.6 SPORTS WAGERING SERVICE PROVIDER STATUS

The National Platform will also be responsible for approving/certifying WSPs as 'sports wagering service providers' (SWSPs) for the purposes of the scheme.

The proposed Commonwealth legislation would prohibit sports wagering to be offered in Australia by any entity *other than a SWSP* recognised by the National Platform. We anticipate that applying for SWSP status will not attract a licensing fee (other than, perhaps, a minimal administration fee upon application and renewal). Rather, we propose that a mandatory precondition for SWSP status would be that a WSP is licensed as a WSP in a state or territory, and subject to any levies and regulatory requirements of that jurisdiction (other than for aspects of sports wagering regulation dealt with by the ASWS).

This means that, to offer a market on an approved event or contingency, a WSP would need to:

- be a designated SWSP
- have a PFIA in place with the relevant SCB
- ensure that any contingency on which wagering is offered is an authorised contingency as per the national schedule. (Discussed further below).

As our proposal anticipates that all NSOs will have SCB status under the ASWS, this may require SWSPs to execute a greater volume of PFIA's than under the current system, depending on the number of sports for which they elect to frame markets.¹⁵⁸

The National Platform, as part of the ASWS, would also need to provide a dispute resolution mechanism for circumstances under which an agreement cannot be reached between the SWSP and the SCB, as per the existing National Policy.

We propose that SWSP accreditation be made on a conditional basis, requiring the SWSP to:

- share sports wagering data with the proposed NSIC in a form conducive to analysis and as negotiated/requested by the National Platform
- share racing wagering data, where required, in a similar manner to sports wagering data, given that the commonalities of integrity threats across both sectors require access to the combined wagering dataset for sports integrity threats to be identified¹⁵⁹
- participate in a 'detect and disrupt' real-time monitoring and analysis of suspicious wagering activity – the SAAS – with the possibility of nationwide suspension of markets, consistent with the requirements of the ASWS.¹⁶⁰

Such arrangements would be consistent with the Macolin Convention, including Article 10 (paragraph 3 requires Parties to the Convention to adopt measures obliging WSPs to report irregular events).

We propose that the National Platform have an ongoing monitoring and compliance role for SWSPs. Stakeholders indicated to us that some WSPs were known to offer wagering on contingencies beyond those which were agreed with SCBs, without any regulatory response. In our view, the National Platform should have compliance and enforcement powers which will enable it, at the very minimum, to issue warnings or expiation notices in cases where

158 At present, under the Victorian and New South Wales SBOM regulatory regimes, sporting events held in Australia which do not have an associated SCB can be approved for wagering services by the regulator. Under the ASWS, it is unlikely that many (if any) sporting events in Australia will not have a relevant SCB.

159 Noting ACIC's advice following recent analysis that wagering data on racing industry and sports wagering data are closely linked – analysis of sports wagering data without racing data would significantly limit the ability of intelligence teams to develop a full picture of integrity threats.

160 This is a requirement of the Macolin Convention – Article 9 (f). Anticipate a model similar to the ESSA detection and disruption model (noting that ESSA's success has been recognised in Europe through its position as the convener of the Macolin regulators stakeholder working group.

this is observed. Similar powers should be available in cases where sports wagering is offered by a WSP that is not a SWSP.

RECOMMENDATION 8

That the National Platform have, as part of the Australian Sports Wagering Scheme, a dispute resolution function to be exercised in circumstances in which an agreement cannot be reached between a Sports Wagering Service Provider (SWSP) and Sports Controlling Body (SCB). Also, that the National Platform have available compliance and enforcement powers for SWSPs or WSPs offering wagering markets on contingencies that are not authorised and/or the subject of an agreement between the SWSP and the relevant SCB.

However, in addition to SCB authorisation through PFIAs, WSPs are required to comply with the regulatory regimes of each state and territory in which wagering services are offered. Different states and territories have different standards for integrity issues – for instance, stakeholders indicated that some regulators would reject proposed contingencies on integrity grounds which had been approved by others. Tabcorp submitted that:

The current state and territory regime based product approval regime therefore creates inconsistency between the potential product offerings between wagering operators based on the jurisdiction in which they are licensed. Integrity would be strengthened by a national system for product approvals or a national system of assessing integrity prior to state and territory product approval. This would improve integrity and address the inconsistency between the states and territories as to the appropriateness of certain betting products.¹⁶¹

7.7 DETERMINATION AND SCHEDULING OF AUTHORISED WAGERING CONTINGENCIES

Key stakeholders raised concerns about the current system for authorising sports wagering contingencies under the SBOM including:

- jurisdictional inconsistency and complexity; with some jurisdictions, such as South Australia, imposing further layers of regulatory control over wagering markets
- a lack of independence, and real or perceived conflict of interest in approval of wagering markets by SCBs (in that sports have an interest in approving markets for financial gain and may discount integrity risks on that basis), and in SCBs using approval of such markets as a lever in negotiating fees.

Under current SBOM arrangements, SCBs have control over which contingencies are authorised for wagering in relation to events under the jurisdiction of the SCB. Because of the national reach of most WSPs (including Tabcorp and other TABs, which operate retail licences and online platforms), WSPs tend to take a national focus when it comes to the application of PFIAs and authorised contingencies, including in jurisdictions where the SBOM has not been implemented.

We agree. In our view, the National Platform should have responsibility for determining, and reviewing from time to time, a schedule of contingencies authorised for sports wagering. This schedule should be determined in cooperation with SCBs and SWSPs.

By centralising this function as part of the ASWS, the National Platform can:

- achieve consistency and certainty across the country with respect to the availability or approved sports wagering markets through the assessment and authorisation process
- apply independent analysis to the determination of authorised sports wagering markets, including relevant input from state and territory regulators, and Commonwealth, state and territory law enforcement as to risk analysis
- publish a list of nationally approved sports wagering markets, recording in relation to individual events, the contingencies on which wagers can be placed, which will also assist in exercising greater regulatory control over data scouts, as outlined below.

RECOMMENDATION 9

That the National Platform be responsible for determining and publishing a schedule of authorised wagering contingencies, following consultation, and in collaboration with law enforcement, sporting organisations, Sports Controlling Bodies, Wagering Service Providers, and state and territory regulators.

7.8 COMBATING ILLEGAL OFFSHORE WAGERING

Many, if not all, sports played in Australia are the subject of offshore wagering markets, including partially regulated and unregulated markets, most notably by operators or networks based in Asia. These markets are characterised by their online accessibility by the huge variety of markets that are shaped on a large number of sports – including at levels beneath the onshore regulated market, and by the opportunity to place bets in-play online.

Under the Commonwealth *Interactive Gambling Act* (IGA), it is unlawful to offer gambling services in Australia without being licensed to do so by an Australian state or territory. It is not, however, unlawful for an Australian resident to place a wager on a sporting event with an offshore wagering provider. See Appendix A for details about the IGA and illegal offshore wagering.

The Macolin Convention requires that parties take action to combat illegal sports wagering:

ARTICLE II – THE FIGHT AGAINST ILLEGAL SPORTS BETTING

- With a view to combating the manipulation of sports competitions, each Party shall explore the most appropriate means to fight operators of illegal sports betting and shall consider adopting measures, in accordance with the applicable law of the relevant jurisdiction, such as:
- closure or direct and indirect restriction of access to illegal remote sports betting operators, and closure of illegal land-based sports betting operators in the Party's jurisdiction
- blocking of financial flows between illegal sports betting operators and consumers
- prohibition of advertising for illegal sports betting operators
- raising of consumers' awareness of the risks associated with illegal sports betting.¹⁶²

Illegal offshore wagering can impact on the integrity of Australian sport in three ways. First, the opacity of many offshore markets means that those seeking to profit from the manipulation of Australian sports competitions can avoid detection by wagering through those offshore platforms. Second, when Australians engage in wagering on offshore online platforms (particularly unregulated or partially regulated platforms), law-enforcement agencies and regulators lose visibility of this wagering activity, making it harder to effectively monitor wagering markets for possible match-fixing or other unlawful activity, and therefore the ability to protect the consumer from markets tainted by manipulation. Third, it results in a loss of product fees payable to NSOs which could have been directed to integrity issues in Australia.

The Review of the Impact of Illegal Offshore Wagering (commonly referred to as the O'Farrell Review), conducted in 2015, examined the social and economic impacts of illegal offshore wagering, with a view to strengthening the enforcement of the IGA and ensuring the Australia was adequately protected from identified harms.

The Government has taken a number of steps with a view to strengthening the Australian response to illegal offshore wagering,¹⁶³ including undertaking to consult with internet service providers on the practicality of disrupting access to overseas-based online wagering providers, who are not licensed in Australia, through the use of blocking or pop-up warning pages; to consult with banks and credit card providers about the practicality of payment blocking strategies to address illegal offshore gambling; exclude from entry into Australia people suspected of associations with unregulated or illegal offshore wagering; prohibit credit betting; and prohibit 'click-to-call' services.

The O'Farrell Review recommended that further work be done on the 'push' factors which result in consumers wagering in offshore markets. *Betting restrictions and online wagering in Australia – A Review of current knowledge*,¹⁶⁴ has been publicly released. It examines, among other factors, the following push factors:

- successful punters being restricted by operators to small bets, totalisator odds, refused access to promotions or refused service altogether
- restrictions by Government on the available bet types or formats, primarily the restriction prohibition of online in-play services to Australian residents.

Elsewhere in this report we identify other push factors, including anonymity and the availability of better odds. The O'Farrell Review recommended that further research be done and further reforms to the wagering system be considered before any liberalisation is considered by government. The Government subsequently determined the market would not be liberalised by allowing online in-play wagering with licensed WSPs.

We support reconsideration of lifting the ban on online in-play wagering with authorised SWSPs in Australia and establishing mandatory acceptance of minimum wagers on specified sports and contingencies. It is highly preferable that sports wagering occurs in a regulated environment which allows for monitoring, detection of and response to incidents of fraud and corruption.

RECOMMENDATION 10

That consideration be given to allowing online in-play wagering in Australia through authorised Sports Wagering Service Providers (SWSPs) to provide a more effective identification of potential wagering-related match-fixing or other forms of sports corruption, and so as to allow sports, authorised Australian SWSPs and governments to receive the financial benefits generated.

¹⁶³ See Appendix A for detailed information on the Government response.

¹⁶⁴ Department of Social Services, 'Betting restrictions and online wagering in Australia – A Review of current knowledge', 28 November 2017, <www.dss.gov.au/communities-and-vulnerable-people/programmes-services/gambling>.

8. ESTABLISHING A NATIONAL PLATFORM

The National Policy and the SBOM established a model of national cooperation for sports wagering regulation; however, a central coordinating body with regulatory powers *and* the ability to gather, analyse and disseminate information remains lacking.

While the consolidation of ACIC/NISU sports wagering corruption monitoring efforts through the establishment of the SBIU represented a step-change in national capability, the SBIU, if in future positioned without a legislative basis, would be limited in its operation.

In our view, a dedicated sports wagering regulation and integrity capability must be established via a statutory authority that would be responsible for delivering:

- a focal point for information gathering, analysis and dissemination, and the coordination of action against competition manipulation and related corruption in sport
- consistent, clear and effective regulation of sports wagering with a focus on protecting the integrity of Australian sport – through the ASWS.

8.1 INFORMATION SHARING UNDER THE SBOM

The National Policy and, in particular, the SBOM, anticipated that information sharing and reporting arrangements would be established and maintained between SCBs, WSPs, state and territory regulators and the NISU. Sharing of information including, ultimately, referral to appropriate law-enforcement agencies, is critically important in the fight against competition manipulation and related corruption.

Reporting requirements currently exist for information giving rise to a suspected threat to sports integrity, through legislation or regulatory

regimes in Victoria and New South Wales, through PFIAs, and through being incorporated within the policies of sporting organisations (as a requirement of eligibility for government funding through the ASC).

Stakeholders expressed a range of views as to whether the current information sharing requirements and arrangements are sufficient to achieve the kind of information sharing that is needed to tackle competition manipulation.

COMPPS indicated that, while information sharing arrangements are mandated through the PFIA systems in the Victorian and New South Wales regulatory schemes, these schemes do not provide for consistency or certainty in what information is shared and when it is to be provided across different PFIAs:

The PFIAs require the sharing of information between the sport and wagering provider for integrity purposes. These requirements are imposed under NSW and Victorian legislation, although there is little detail as to what level of information and co-operation is required. In response, the Sports have negotiated relatively detailed processes for the auditing of betting accounts of their players and officials and the provision of information and alerts for wagering on their competitions. It must be noted, however, that the level of access is dependent on contractual negotiation by the individual sports.¹⁶⁵

165 Coalition of Major Professional and Participation Sports, *Submission 20*.

COMPPS also showed its support for a central information sharing mechanism to streamline reporting requirements:

Online wagering takes place nationally, but the current regulatory environment requires the Sports to deal directly with individual State and Territory regulators, each of which has different reporting and information sharing requirements. This generates a significant administrative burden on Sports, creates duplication and increases the risk of information becoming siloed from jurisdiction to jurisdiction.

The Sports are supportive of measures that seek to streamline reporting and notification requirements across Australian jurisdictions, and that facilitate the sharing of information between individual regulators and sports.¹⁶⁶

Conversely, Tabcorp indicated some level of satisfaction with current arrangements, as did Responsible Wagering Australia (RWA), the independent peak body representing stakeholders in the Australian online wagering industry.¹⁶⁷

While both Tabcorp's and RWA's members have integrity measures in place, the current arrangements are not sufficient to address the contemporary threats. In this regard, all law-enforcement stakeholders submitted that information sharing for sports wagering needed to be improved. Most recommended that this be centralised.

INFORMATION SHARING AND THE SPORTS BETTING INTEGRITY UNIT

Recognising gaps in the current information sharing arrangements under the SBOM, the NISU and the ACIC established the SBIU as a joint initiative in November 2017. The SBIU represented a major improvement in Australia's national response, providing for the first time in Australia a central facility to:

- collect, collate, analyse and disseminate wagering-related intelligence across all sport

- allow access to the full suite of ACIC powers and pursue sports wagering corruption matters within a secure, criminal intelligence and enhanced data analytics environment
- support proactive and reactive wagering fraud intelligence development
- provide a single national point of sports wagering expertise for partnering with Commonwealth and state law-enforcement agencies, SCBs, SWSPs, state and territory regulators, and governments.

While the establishment of the SBIU was a critical investment, its potential capability may be limited due to a lack of statutory underpinning. The SBIU is building effective information relationships with key stakeholders, and through these relationships is able to source important data and intelligence. However, no stakeholders are obligated to provide data and intelligence to the SBIU other than through the exercise of the ACIC's coercive powers.

We view as essential that, as part of a national system of sports wagering regulation, information collection, analysis and dissemination between relevant organisations (including the SBIU as part of the national framework) become routine, systematic and legislation based, rather than occurring by exception. In our view, this will be best achieved through the establishment of a National Platform, of which the SBIU should become a part.

8.2 REQUIREMENTS OF THE MACOLIN CONVENTION

In our analysis and in forming our recommendations for sports wagering regulation, the terms of the Macolin Convention have greatly assisted, particularly with respect to the requirement under the Convention of establishing (or identifying) a National Platform, and the measures to be undertaken by a 'responsible authority' for the regulation of wagering. Becoming a Party to the Convention, as we have recommended in this report, would provide an extra basis and guidance for legislation for the creation of an ASWS.

¹⁶⁶ Ibid.
¹⁶⁷ Tabcorp, *Submission 29*.

The Macolin Convention sets out the following requirements of a 'National Platform':

ARTICLE 13 – NATIONAL PLATFORM

1. Each Party shall identify a national platform addressing manipulation of sports competitions. The national platform shall, in accordance with domestic law, inter alia:
 - a. serve as an information hub, collecting and disseminating information that is relevant to the fight against manipulation of sports competitions to the relevant organisations and authorities;
 - b. co-ordinate the fight against the manipulation of sports competitions;
 - c. receive, centralise and analyse information on irregular and suspicious bets placed on sports competitions taking place on the territory of the Party and, where appropriate, issue alerts;
 - d. transmit information on possible infringements of laws or sports regulations referred to in this Convention to public authorities or to sports organisations and/or sports betting operators;
 - e. co-operate with all organisations and relevant authorities at national and international levels, including national platforms of other States.¹⁶⁸

The Macolin Convention sets out the following requirements for the regulation of sports wagering:

ARTICLE 9 – MEASURES REGARDING THE BETTING REGULATORY AUTHORITY OR OTHER RESPONSIBLE AUTHORITY OR AUTHORITIES

1. Each Party shall identify one or more responsible authorities, which in the Party's legal order are entrusted with the implementation of sports betting regulation and with the application of relevant measures to combat the manipulation of sports competitions in relation to sports betting, including, where appropriate:
 - a. the exchange of information, in a timely manner, with other relevant authorities or a national platform for illegal, irregular or suspicious sports betting as well as infringements of the regulations referred to or established in accordance with this Convention;
 - b. the limitation of the supply of sports betting, following consultation with the national sports organisations and sports betting operators, particularly excluding sports competitions:
 - i. which are designed for those under the age of 18; or
 - ii. where the organisational conditions and/or stakes in sporting terms are inadequate;
 - c. the advance provision of information about the types and the objects of sports betting products to competition organisers in support to their efforts to identify and manage risks of sports manipulation within their competition;
 - d. the systematic use in sports betting of means of payment allowing financial flows above a certain threshold, defined by each Party, to be traced, particularly the senders, the recipients and the amounts;
 - e. mechanisms, in co-operation with and between sports organisations and, where appropriate, sports betting operators, to prevent competition stakeholders from betting on sports competitions that are in breach of relevant sports rules or applicable law;
 - f. the suspension of betting, according to domestic law, on competitions for which an appropriate alert has been issued.¹⁶⁹

We propose that a national capability with the form and function described by the Macolin Convention as required for a National Platform be established as a matter of urgency, formalising and expanding

¹⁶⁸ Council of Europe Convention on the Manipulation of Sports Competitions, opened for signature 18 September 2014, CETS No. 215.
¹⁶⁹ Ibid.

the work of the SBIU. This view is supported by key stakeholders with whom we have consulted. COMPPS, for instance, submitted:

Key to the identification and management of match-fixing events is improved information sharing. The Sports support establishment of a 'national platform', whether through the adoption of the Macolin Convention or otherwise. We note that an equivalent entity, the Sports Betting Intelligence Unit, has performed this function successfully for UK sports in recent years.

The Sports also support ongoing transnational cooperation between Australian agencies and international agencies including through formalised information sharing arrangements and through participation in sports integrity bodies such as the IOC supported International Sports Integrity Partnership.¹⁷⁰

Sportradar, with its extensive experience in combating competition manipulation through analysis of wagering markets, also supported the establishment of a single point of contact for information and intelligence:

From a betting integrity perspective, Sportradar believes that the ideal framework in any jurisdiction should include a capability that suspicious betting reports and intelligence are collated into a central unit/function operating across all sports and domestic betting operators. It is not clear if such a capability exists in the Australian betting integrity landscape. Such a unit should interact with sports, betting operators and law enforcement and should ideally have access to all bets placed in the domestic regulated market in real-time through a national bet monitoring system and oversight of international betting markets.¹⁷¹

We agree. The establishment of a focal point for information gathering, analysis and dissemination (including a national wagering monitoring system), and the coordination of action against competition manipulation and related corruption in sport, as anticipated by the Macolin Convention, will be critical in ensuring Australia's response to the threat of competition manipulation is robust and effective.

We propose that this function be co-located with the regulatory responsibility for sports wagering (through the ASWS) in a National Platform, namely the proposed NSIC.

The precise terms of Article 9 allow for a federated system of jurisdictional regulators; however in our view, the obligations of information sharing, monitoring of financial transactions, approval of SCBs and SWSPs and of contingencies and national suspension of betting, can only be effectively coordinated through a National Platform.

With respect to our recommendation that a National Platform be established, given the critical importance of establishing this capability in the Australian regulatory system, we are of the view that it should be established with reference to the terms of the Macolin Convention, whether or not Australia becomes a Party to that convention.

Also, while we believe that this capability and all associated powers and regulatory responsibilities should be vested in the proposed NSIC (as detailed in Chapter 6), work towards this outcome should not result in any deferment in the establishment of these functions.

To the extent that there may be any delay associated with the establishment of the proposed NSIC, the functions and powers described above for information sharing and sports wagering regulation should be vested in another entity – for instance, the NISU.

RECOMMENDATION II

That, whether or not Australia becomes a party to the Macolin Convention, and initially independent, if necessary, of the establishment of the proposed National Sports Integrity Commission, the Australian Government, as a matter of urgency, formalise and expand the work of the Sports Betting Integrity Unit by establishing a 'National Platform' entity with the powers and capabilities needed to address the threat of match-fixing as outlined in Article 13 of the Macolin Convention (including the national regulation of sports wagering, administering the Australian Sports Wagering Scheme, and for information and data sharing.).

RECOMMENDATION 12

That, on the establishment of the proposed National Sports Integrity Commission (NSIC), the functions, powers and capabilities of the National Platform be subsumed within the NSIC, as part of the its broader regulatory and law-enforcement function. The NSIC will then be identified as Australia's 'National Platform' for the purposes of satisfying Article 13 of the Macolin Convention.

8.3 SUSPICIOUS ACTIVITY ALERT SYSTEM

We propose that a real-time wagering fraud detection and response capability be established – a 'Suspicious Activity Alert System' (SAAS) – to be administered by the National Platform, and through which:

- it would receive initial reports from individual SWSPs (or other similar entities) of suspicious wagering activity
- following initial assessment, should the report meet a relevant threshold, it would broadcast an alert to other SWSPs
- SWSPs would be expected to then review their wagering markets for similar activity and respond to it within a short period, to be determined
- on receiving and reviewing reports from all SWSPs, it would then decide on further action, and provide relevant information and assistance to law enforcement, regulators and others as appropriate.

In our view, participation in the SAAS should be a mandatory condition of SWSP status. Consideration should be given as to how the National Platform might administer the SAAS in a manner which would maintain confidentiality for the source of

the initial alert and any resulting reports of related suspicious activity from SWSPs.

As well as enabling SWSPs to effectively manage their own markets (including through receiving alerts from the National Platform), the SAAS would allow for effective notification of the relevant state or territory gambling regulator, as well as the Macolin 'Group of Copenhagen', ensuring effective international coordination of government response.

The SAAS, in addition to the National Platform's other functions including the monitoring and coordination of real-time¹⁷² wagering data, would allow for immediate responses to sport wagering integrity threats, and enable the SBIU to operationalise the function whereby betting markets can be nationally suspended. This function is mandated by Article 9 of the Macolin Convention, which requires parties to establish a mechanism whereby betting markets can be suspended in appropriate circumstances.¹⁷³

The National Platform, through the SBIU, could usefully engage sports wagering fraud detection providers to monitor and provide leads and intelligence in relation to suspicious activity in domestic and international betting markets associated with Australian sporting fixtures.

RECOMMENDATION 13

That the National Platform facilitate a Suspicious Activity Alert System (SAAS), enabling real-time receipt and dissemination of alerts, collection of responses and assessment of integrity risk, to allow timely and decisive action. Participation in the SAAS is to become a condition of Sports Wagering Service Providers status, with the National Platform to have the authority to nationally suspend wagering markets where significant risk of match-fixing is identified.

172 In the event that the Commission negotiates receipt of real-time feeds from WSPs, and/or procures real-time betting market monitoring services.

173 In operationalising the SAAS, the National Platform will emulate the proactive monitoring and alert systems already being successfully operated by overseas entities, including UKGC and ESSA.

8.4 INFORMATION COLLECTION AND SHARING

As outlined above, the National Platform would be a focal point for information gathering, analysis and dissemination, and the coordination of action against competition manipulation and related corruption in sport.

Improved information sharing across the sports integrity sector was raised by most stakeholders as a critical reform for consideration, reiterating a general understanding that much relevant information is already being collected or produced by various stakeholders but is not (and in some cases, cannot) yet being brought together to form cohesive intelligence product.

The National Platform, including through the establishment of the ASWS, would receive data, information and intelligence from SCBs and SWSPs. It would receive a large volume of information, including personal information, relating to athletes and support personnel, and sports and racing wagering consumers. It would also become aware of and be in receipt of material alleging criminal conduct.

As such, it would be essential to the operations of the National Platform for it to be able to collect 'sensitive information' about a person without consent.¹⁷⁴ In our view, the ability to have the confidence of international and Australian law enforcement and other agencies as both a receiver and provider of personal information and material alleging criminality necessitates that the National Platform be designated as a 'law-enforcement agency' for the purposes of carrying out its statutory functions (including under the legislation giving rise to the ASWS).

The designation of the National Platform as a law-enforcement agency mandates safeguards with which it must adhere in relation to security of information and the lawful management and disclosure to domestic and international partners. These safeguards would provide a level of confidence to all stakeholders including sports, WSPs, government agencies and other law-enforcement agencies (domestic and international).

Establishing the National Platform as a law-enforcement agency would also enable other bodies governed by the Australian Privacy Principles to disclose information to the NSIC for a secondary purpose (being that it may be relevant to the manipulation of a sports event) for enforcement-related activities.¹⁷⁵

Under the *Privacy Act*, the National Platform could use or disclose personal information for the purpose that it was collected. To strengthen the capacity of the National Platform to use and disclose information, it would be preferable to include permissive provisions in the establishing legislation, which enable the National Platform (or a specified senior Commonwealth officer with managerial responsibilities for the National Platform) to authorise the use and disclosure of personal information for an appropriate range of purposes (this would then make the use/disclosure authorised by law for the purposes of APP 6.2(b)).¹⁷⁶

Further work on secrecy laws would be necessary to determine the circumstances under which information collected by a state or territory law-enforcement agency relevant to sports integrity activities may be shared with the National Platform, where that information or its method of collection attracts a secrecy provision limiting its use and disclosure. The extent to which, and manner in which, the National Platform could use that information or on-disclose it would also need to be considered.

It is anticipated that the National Platform would therefore be in a position to engage internationally in criminal investigations and assist with law-enforcement efforts (initially with Commonwealth law-enforcement agencies – including the ACIC, or the SBIU – with this capacity (along with its other functions and responsibilities) to be transitioned to the proposed NSIC.¹⁷⁷

174 *Privacy Act 1988* (Cth) s. 6.

175 Noting that Victoria Police is currently seeking legislative amendments which will allow it to share such information with sporting organisations – see record of consultation.

176 See, for example, s 68B of the *Australian Sports Anti-Doping Authority Act 2006* (Cth).

177 UKGC notes of consultation – in that the LEA associated with the national platform (or, the platform itself if in fact it is established as a law-enforcement agency) will necessarily take on the function of international criminal investigation and enforcement cooperation.

RECOMMENDATION 14

That a central clearinghouse function be established within the National Platform to receive, assess and disseminate data, information and intelligence from Sports Wagering Service Providers (SWSPs) and Sports Controlling Bodies (SCBs), including:

- line-by-line transaction data and account information from SWSPs (including for sports wagering and racing)
- all relevant player, support personnel and other sport integrity related data (including as might be deemed relevant from time to time) from SCBs.

RECOMMENDATION 15

That provision of relevant sports integrity related data, information and intelligence (including the reporting of any suspicious activity in a timely manner) be a condition of Sports Controlling Body and Sports Wagering Service Provider status.

RECOMMENDATION 16

That the National Platform have status as a law-enforcement agency in order to receive, deal with and disseminate law enforcement and private information.

CHAPTER

4

THE CAPABILITY OF THE AUSTRALIAN SPORTS ANTI-DOPING AUTHORITY AND AUSTRALIA'S SPORT SECTOR TO ADDRESS CONTEMPORARY DOPING THREATS

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I. INTRODUCTION

The anti-doping framework, both domestically and internationally, is highly complex; it involves national and international governance, private corporations and NGOs in a complicated web of contractual agreements, private arbitration and government regulation which operates both coercively and by way of moral imperative and reputational protectionism.

Broadly speaking, Australia's anti-doping framework has been very successful in detecting and preventing doping.

However, as noted in preceding chapters, traditional methods of detection are becoming less effective against contemporary doping threats, concomitantly diminishing the deterrent value of the anti-doping framework, and resulting, ultimately, in a risk that the incidence of doping will increase.

In this chapter, we review the capability of the Australian anti-doping framework to address contemporary doping threats, examining whether the regulatory and operational landscape in which ASADA and the sports sector operate remains fit for purpose.

The focus is on the pre-hearing phase of the anti-doping framework, noting first the international context within which Australia's arrangements operate, and then examining the capacity of the local framework, including the role and capacity of ASADA, to address modern doping threats.

2. KEY FINDINGS AND RECOMMENDATIONS

KEY FINDINGS

1. Rigorous and effective measures to combat doping in sport are essential for protecting the inherent value of sport for the Australian community.
2. Doping has become increasingly sophisticated and harder to detect by analysis of urine and blood. A detection program involving both sample analysis and intelligence-based investigations is required for the enforcement of anti-doping rules, as a foundation for preventive measures, and for the pursuit of non-analytical cases.
3. The Australian anti-doping program is well regarded and the Australian Sports Anti-Doping Authority is an internationally respected National Anti-Doping Organisation. However, in the absence of significant reform, Australia's anti-doping program will be unable to address current and foreseeable future doping challenges effectively.
4. The current suite of statutory protections and powers under the *Australian Sports Anti-Doping Authority Act 2006* (Cth) are not sufficient to facilitate Australian Sports Anti-Doping Authority's increasing emphasis on intelligence-based investigations.
5. The current level of investment in effective anti-doping education and engagement by the sport sector and the Australian Sports Anti-Doping Authority is insufficient and lacks the required impact, particularly for athletes below the national level.
6. Statutory powers are required to ensure that the Australian Sports Anti-Doping Authority's regulatory functions can be carried out effectively, particularly with respect to auditing and enforcing Code-compliant practice and procedure.
7. The Australian Sports Anti-Doping Authority (ASADA) is under-resourced, and current financial arrangements for sample analysis mean that ASADA is unable to offer a commercially competitive product, including for international events in Australia where the user-pays market dominates.
8. The anti-doping rule violation (ADRV) process is overly bureaucratic, inefficient, dilatory and cumbersome. It is confusing for those subject to an ADRV allegation and their representatives, and time consuming in an environment where quick and efficient outcomes are critical.
9. Anti-Doping Rule Violation Panel (ADRVP) consideration of adverse analytical finding (AAF) Anti-Doping Rule Violations (ADRVs) is unnecessary and potentially dilatory in the final resolution of an ADRV case. The ADRVP offers higher value in consideration of non-AAF ADRVs which are established through evidence gathered through investigations and intelligence.
10. Aside from its role in reviewing individual matters referred by the Australian Sports Anti-Doping Authority (ASADA) CEO, Anti-Doping Rule Violation Panel members provide critical advisory services that are currently in excess of its mandate, which assist ASADA in ensuring that case development and presentation is maintained at a high standard.
11. The Australian Sports Drug Medical Advisory Committee (ASDMAC) provides a very high level of service to the Australian sporting community for the administration of Therapeutic Use Exemptions (TUEs). The ASDMAC members and particularly the Chair, like the Anti-Doping Rule Violation Panel, also provide important services currently in excess of its mandate, including medical advice about specific Anti-Doping Rule Violation matters (beyond possible TUEs) to the Australian Sports anti-Doping Authority CEO.

RECOMMENDATIONS

ANTI-DOPING REGULATION

1. That the Australian Sports Anti-Doping Authority be retained as Australia's National Anti-Doping Organisation and that the current requirement for all National Sporting Organisations (including sports with competitions only up to the national level) to have anti-doping rules and policies that comply with the World Anti-Doping Code also be retained.
2. That the Australian Sports Anti-Doping Authority's regulatory role and engagement with sports in relation to the audit and enforcement of sport's compliance with anti-doping rules and approved policies be enhanced by establishing regulatory compliance powers exercisable by the proposed National Sports Integrity Commission in collaboration with (and at the request of) the Australian Sports Anti-Doping Authority CEO.
3. That the introduction of regulatory amendments to the *Australian Sports Anti-Doping Authority Act 2006* (Cth) (ASADA Act) be considered to provide for:
 - extending statutory protection against civil actions to cover National Sporting Organisations (NSOs) in their exercise of Anti-Doping Rule Violation functions
 - facilitating better information sharing between ASADA and NSOs through enhancing statutory protections over information provided to an NSO by ASADA
 - empowering the ASADA CEO to comment on current cases under broader circumstances than currently permissible under s 68E of the ASADA Act, including where misinformation has been published
 - empowering the ASADA CEO to exercise discretion in respect of lower level athletes to apply more flexible rules in accordance with guidelines to be developed but maintaining compliance with the Code.

ANTI-DOPING EDUCATION AND OUTREACH

4. That the Australian Sports Anti-Doping Authority and the sports sector should increase their respective investments in anti-doping education, collaborating to deliver more effective education and training packages with greater reach below national-level athletes (with the benefit of the example provided by United Kingdom's Anti-Doping Education Delivery Network, World Anti-Doping Agency and other education programs established by other National Anti-Doping Organisations). Education and training programs to focus on:
 - information on the testing process and allied rights of athletes
 - the need for values-based education.

ANTI-DOPING TESTING AND INVESTIGATIONS

5. That the Australian Government ensure that the Australian Sports Anti-Doping Authority is adequately resourced and financially sustainable, enhancing its capacity to engage with sports and be an effective and responsive regulator and National Anti-Doping Organisation.
6. That the Australian Government resolve long-standing issues regarding the costs and sustainability of the sample analysis system in Australia to enable an effective testing program, and ensure that the Australian Sports Anti-Doping Authority is commercially competitive in the user-pays market.
7. That the Australian Sports Anti-Doping Authority's investigative capability be enhanced by:
 - establishing, through collaboration with the sporting sector, guidelines for the conduct of anti-doping investigations which clearly define the roles and responsibilities of government agencies (including the Australian Sports Anti-Doping Authority (ASADA)) and the sporting sector (subject to the Australian Government Investigations Standards)

- establishing strong information and intelligence sharing links with law-enforcement agencies and regulatory agencies, including with and through the proposed National Sports Integrity Commission (NSIC)(with consideration being given to the application of the *Privacy Act 1988* (Cth) and any need for amendment, including conferring law-enforcement status on ASADA and the NSIC)
- strengthening ASADA's disclosure notice regime by:
 - » excluding the right to claim privilege against self-incrimination when answering a question or providing information to ASADA, while providing, where an objection or privilege is raised, appropriate protections against non-direct or derivative use in any criminal prosecution
 - » ensuring that sanctions for non-compliance with disclosure notices are appropriate
- establishing whistleblower protections.

ANTI-DOPING ENFORCEMENT AND SANCTION (PRE-HEARING)

8. That the Anti-Doping Rule Violation (ADRV) process be streamlined, but remain responsive to the increasing emphasis on non-adverse analytical finding (non-AAF) ADRVs. That this be achieved through:
 - amending the statutory process so that a response to ADRV allegations from an athlete or support person is sought no more than once prior to the issue of an infraction notice
 - removing recourse to the Administrative Appeals Tribunal for review of any aspect of the pre-hearing ADRV process
 - retaining the expertise of Anti-Doping Rule Violation Panel members in an advisory capacity or as arbitrators for the proposed National Sports Tribunal.

THE ROLE OF THE AUSTRALIAN SPORTS DRUG MEDICAL ADVISORY COMMITTEE

9. That, in recognition of the extra services that the Australian Sports Drug Medical Advisory Committee (ASDMAC) provides to the Anti-Doping Rule Violation process and the appropriateness (or otherwise) of these services being provided by the ASDMAC, the Australian Sports Anti-Doping Authority consider, as an alternative, strategies for incorporating more medical expertise within its workforce.

3. PREVALENCE OF DOPING

International cooperation and the coordination of efforts in the fight against doping continue to improve. But even as the anti-doping effort becomes more sophisticated, making it harder for athletes to 'get away with it', doping among athletes at all levels continues.

According to WADA, in global sport in 2015:

- 1,929 ADRVs were recorded
- 122 nationalities were represented (including Australia)
- 85 sports were affected.¹⁷⁸

Perhaps more damning as a demonstration of the global problem are the results of the IOC reanalysis program for the Beijing 2008 Olympic Games, which identified significant levels of doping undetected during the Games. Six athletes returned positive tests during the Games and were removed from the competition; however, reanalysis in 2009 and 2016 of samples taken during the Games detected 65 instances of doping, involving 41 medals.¹⁷⁹

In 2014, Australia recorded the seventh highest number of ADRVs in the world with 49, behind Russia, Italy, India, Belgium, France and Turkey.¹⁸⁰ In 2016–17, ASADA reported 34 sanctions across 13 sports. There are currently 48 Australian athletes and support people under sanction, serving bans and suspensions for various periods from a variety of sports.¹⁸¹ This is not to say that Australia has a

particularly serious doping problem – in our view it is more likely that the relatively high number of ADRVs recorded in Australia is an outcome of Australia's effective anti-doping program.

It is highly likely that statistics regarding doping sanctions significantly under-represent the problem of doping in sport. In recognition of this, in 2012 WADA established a working group to consider why the testing programs run by NADOs and international sporting organisations (ISOs) do not seem to be working as effectively as they should, given the anecdotal evidence of doping at much higher levels than the number of positive cases would suggest.¹⁸² ASADA asserts¹⁸³ that because the use of PIEDS is more complex and sophisticated than ever before, doping is much harder to detect – an assertion borne out by the results of several recent reanalysis programs, including those relating to recent Olympic Games.¹⁸⁴ It is generally accepted now that a detection program involving both sample analysis and intelligence-based investigations is required for the enforcement of anti-doping rules, as a foundation for preventive measures, and as a means to pursue non-analytical cases.

178 World Anti-Doping Agency, '2015 Anti-Doping Rule Violations (ADRVs) Report', 3 April 2017, <<https://www.wada-ama.org/en/media/news/2017-04/wada-publishes-2015-anti-doping-rule-violations-report>>.

179 International Olympic Committee, 'IOC Re-Analysis Programme Beijing 2008 and London 2012' (18 August 2017) <<https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/IOC/Who-We-Are/Commissions/Disciplinary-Commission/2017/Annex-IOC-reanalysis-programme-18-August-2017-eng-only.pdf>>.

180 World Anti-Doping Agency, '2014 Anti-Doping Rule Violations (ADRVs) Report', 3 April 2016, p. 5, <https://www.wada-ama.org/sites/default/files/resources/files/wada-2014-adrv-report-en_0.pdf>.

181 Australian Sports Anti-Doping Authority, *Sanctions*, 25 November 2017, Sanctions – Violation List <<https://www.asada.gov.au/sanctions>>.

182 World Anti-Doping Agency, 'Report to WADA Executive Committee on Lack of Effectiveness of Testing program', <<https://www.wada-ama.org/sites/default/files/resources/files/2013-05-12-Lack-of-effectiveness-of-testing-WG-Report-Final.pdf>>.

183 Australian Sports Anti-Doping Authority, *Submission 10*.

184 Grohmann K, *Sample re-tests from Sochi Olympics to run to 2022: IOC*, 21 February 2017, Reuters <<https://www.reuters.com/article/us-doping-olympics-sochi/sample-re-tests-from-sochi-olympics-to-run-to-2022-ioc-idUSKBN1600UE>>.

4. ASADA'S ROLE AND APPLICATION OF THE ASADA ACT AND NATIONAL ANTI-DOPING SCHEME

Anti-doping arrangements operate fundamentally on a 'sport runs sport' basis, with the adoption of Code-compliant anti-doping policies being a precondition for continued international recognition and government support.

In Australia, this manifests in NSOs developing and implementing Code-compliant, ASADA-approved policies; committing their athletes and support persons, through contractual arrangements, to abide by these policies; working with ASADA as the Australian NADO to implement effective anti-doping activities; and, through referral of ADRV assertions from ASADA, being responsible for making the final decision on possible ADRVs. Its engagement in this space is consistent with obligations under the Council of Europe Anti-Doping Convention 1989 (CoE Convention) and the UNESCO International Convention against Doping in Sport (UNESCO Convention), to each of which Australia is a state party.

4.1 APPLICATION OF THE CODE TO ATHLETES

The Code defines an athlete (in part) as:

Any Person who competes in sport at the international level (as defined by each International Federation) or the national level (as defined by each National Anti-Doping Organisation). An Anti-Doping Organisation has discretion to apply Anti-Doping rules to an Athlete who is neither an International-Level Athlete nor a National-Level Athlete, and thus bring them within the definition of 'Athlete.'¹⁸⁵

In Australia, under the National Anti-Doping (NAD) Scheme, the Code applies to all Australian athletes competing in a sport under a governing body with an anti-doping policy. This is given effect through ASC funding arrangements, which require NSOs to have a Code-compliant, ASADA-approved anti-doping policy to be recognised as an NSO and be eligible to receive government funding.

Under these arrangements, NSOs are also required to compel state sporting organisations (SSOs) to implement similar arrangements; the net effect of which is that essentially, all Australian athletes, whether competing at state, national or international levels are subject to the Code.

However, the sporting landscape is not the same in every country. In the United States of America, the major leagues, including Major League Baseball (MLB), the National Basketball Association (NBA), the National Football League (NFL) and the National Hockey League (NHL) are not subject to any government control, do not receive government funding, and are not subject to the Code and/or the UNESCO Convention (with the exception of players selected for Olympic teams, who are subject to IOC anti-doping policies and hence the Code for about three months prior to the Games). As a result, they have developed and implemented sport-specific anti-doping rules and policies that are not Code-compliant.

¹⁸⁵ *World Anti-Doping Code*, World Anti-Doping Agency (effective as of 1 January 2015) Appendix 1, Definitions.

The Australian Athletes' Alliance (AAA) is of the view that a differentiation of this kind in the treatment of certain sports is preferable to the current arrangements in Australia:

A global approach is unnecessary to Australian team sports. A global approach is necessary only for competitions that are truly international: where the variance of the standards of different countries may unfairly prejudice or assist an athlete. Australian leagues, such as the AFL, in which teams do not compete internationally, should not be required to bear the costs and bureaucracy of an international regime. As in the US, only those athletes who intend to compete in international events (like the Olympics) should be required to submit to the WADA regime. Australian leagues and sports should negotiate an Australian regime that is not dictated by WADA.¹⁸⁶

AAA's view is not based entirely on issues of cost. It has submitted that an Australian system for national-level athletes in professional sports could be more tailored and responsive to the character of the sports involved, as opposed to being tailored to the four-year Olympic cycle:

Penalties under the WADA Code [sic] are often disproportionate. Sanctions must be determined having regard to the overall circumstances of a case and the relevant sport. The four-year ban based on the Olympic cycle is irrelevant to all professional team sports. While cheats should be heavily sanctioned, the sanction must be based on the specific circumstances of the case.

...

WADA does not currently fit with professional team sports in which athletes are employed full time within a controlled workplace. Anti-doping codes in American team sports better reflect a full-time working environment, including through penalties that contemplate employment.¹⁸⁷

Submissions were also received from members of the public concerned about a perceived ceding of jurisdiction over Australian athletes and matters to foreign tribunals. These concerns appear to have related to the incorporation of the Code

in the Australian framework, which ultimately leads to oversight of the Australian anti-doping program by WADA, with the final right of appeal through the Court of Arbitration for Sport (operating under Swiss law) and review by the Swiss Federal Tribunal.¹⁸⁸

We agree that some elements of the Australian anti-doping framework require improvement but we do not agree that the anti-doping framework requires the kind of fundamental reform proposed by AAA and others.

There is no question that international anti-doping arrangements must apply to Australian athletes competing at the international level and at the national level as determined by ASADA. This is necessary so that Australian athletes are able to compete internationally, to ensure that Australia legally complies with its international obligations under the UNESCO Convention, and that ASADA remains a Code-compliant NADO.

The Code contemplates that national governments (through their respective NADOs) might apply some nuance in constructing their definition of a 'national-level athlete'. It is suggested by some stakeholders that national-level athletes competing in sports which have no international-level competition should fall outside of any definition that would require compliance with the Code.

In our view, there is no overall benefit from changing the present policy and thereby creating a dual system in Australia for national-level athletes. No evidence has been submitted to the Review which would warrant such an amendment to current anti-doping arrangements.

The independence and objectivity inherent in applying the Code to all Australian sports makes for a simpler, clearer and consistent anti-doping system, beyond the reach of internal sport politics and collective bargaining.

Accordingly, we do not agree with AAA's argument regarding the reach of the Code in relation to sanctions or the 'fit' of the world anti-doping system overseen by WADA.

Our view is that penalties under the Code are sufficiently flexible to allow for effective application in a professional team-sports environment.

186 Australian Athletes' Alliance, *Submission 25*.

187 *Ibid.*

188 For example, Bruce Francis, *Submission 9*.

Other stakeholders from across the sports sector indicated a broad satisfaction with the role of ASADA, and the general effectiveness of the Australian anti-doping framework, including its current reach and application to Australian athletes at all relevant levels.¹⁸⁹

In our view, the fundamental structure and broad application of Australia's anti-doping framework is effective and should remain.

RECOMMENDATION 17

That ASADA be retained as Australia's National Anti-Doping Organisation and that the current requirement for all National Sporting Organisations (including sports with competitions only up to the national level) to have anti-doping policies that comply with the World Anti-Doping Code also be retained.

4.2 ASADA'S REGULATORY ROLE – COMPLIANCE WITH ANTI-DOPING POLICIES

ASADA plays an important regulatory role in the Australian anti-doping framework, but to be truly effective in this role, an effective audit and enforcement regime must be in place with respect to the Code-compliant policies that ASADA oversees.

There is a perception in the community and among some stakeholders that ASADA is, or should be, a service delivery agency. COMPPS shares this opinion, indicating that in its view a 'perfect model' would incorporate ASADA as:

... a well-resourced, agile support agency, managing the technical and scientific aspects of possible ADRVs and providing a platform for knowledge and information sharing between Government, law enforcement agencies and Australian sports. It would provide a more effective, intelligence driven testing program for sports. It would provide education support to supplement the processes provided by the Sports.¹⁹⁰

It is clear from a plain reading of the ASADA Act and the NAD Scheme that ASADA currently does have regulatory functions. ASADA's most important regulatory function, executed through the office of the CEO, is to monitor the compliance of sporting administration bodies (essentially NSOs) with the sporting administration body rules set out in the NAD Scheme.¹⁹¹

Clause 2.03 (2) of the *Australian Sports Anti-Doping Authority Regulations 2006* (Cth) provides:

The CEO is authorised:

- to monitor the compliance by sporting administration bodies with the sporting administration body rules
- to notify the ASC about the extent of the compliance by sporting administration bodies
- to publish reports about the extent of compliance by sporting administration bodies with the sporting administration body rules.¹⁹²

The authorisation of the CEO to notify the ASC regarding non-compliance is critical because the ASC is responsible for distributing the vast majority of government funding to sports organisations in Australia. It is through this funding mechanism that the Government is able to exert some regulatory control for integrity and governance issues.

189 Coalition of Major Professional and Participation Sports, *Submission 20*.

190 *Ibid.*

191 *Australian Sports Anti-Doping Authority Act 2006* (Cth) s.3(2)(a).

192 *Australian Sports Anti-Doping Authority Regulations 2006* (Cth) – Schedule 1 Cl 2.04 (2).

As noted above, the ASC requires, as a precondition to government recognition and eligibility for funding, that sports have a Code-compliant, ASADA-approved anti-doping policy. However, once established, in the event that non-compliance with such a policy is identified by ASADA, and the ASC is notified, there does not appear to be any formal guidance as to the action that the ASC must take with respect to sanctioning the NSO (sanctions being limited to restricting or withholding of funding). ASADA advised us that there is no formal process for dealing with such notifications, nor is there any guarantee that the ASC will take any action in response to a notification from it.

IS IT A PROBLEM?

ASADA has submitted that its monitoring role has not been clearly defined, and observed that issues have arisen in the past which have been difficult to resolve due to a lack of regulatory powers:

For example, there have been historical issues that affect the anti-doping area, such as inadequate membership forms in sports whereby it is difficult (or impossible) for ASADA to establish contractual jurisdiction of an athlete or support person. While the NAD scheme applies to these individuals as a matter of legislation, there is no contractual nexus with the NSO to impose appropriate penalties or issue infraction notices. Ideally, a more formalised audit role of ASADA and a process of non-compliance that encouraged and provided sports with an opportunity to increase integrity measures would be of some benefit.

ASADA has also had difficulty with sports adopting Code compliant anti-doping policies after the introduction of new versions of the Code. These difficulties are largely brought about by the lack of any significant mechanisms to make sports become compliant. A more formalised audit process of sports compliance with anti-doping rules and a clearly defined process for non-compliance would assist ASADA in its efforts to make sports compliant with the sporting administration body rules.¹⁹³

Sports have raised similar issues with us regarding the requirement for Code-compliant ASADA-approved anti-doping policies, but from a different perspective, for example COMPPS submitted:

Sports are permitted to update their policies if they obtain ASADA's approval. ASADA has resisted attempts by a number of the Sports to update and enhance the model policy, and contextualise it for practical, real-world scenarios relevant to their sport. This has compounded the Sports' confusion in relation to current ADRV processes.

What inevitably follows is the adoption of an anti-doping policy that contains ambiguities and uncertainties. For example there is only one reference to the ADRV in the entire Tennis Anti-Doping Policy. As a result, there are gaps within the policy in relation to the process for referral to the ADRV, the composition of the ADRV and the rights of the respondent with respect to the ADRV.¹⁹⁴

A STATUTORY COMPLIANCE REGIME

We accept that ASADA's compliance role has focused on cooperative compliance rather than coercion, and is a feature of the Australian anti-doping framework. In our view, this focus on collaboration has proven to be generally successful, including with respect to developing and maintaining close relationships with sporting organisations.

We do not necessarily share ASADA's view that the ASADA Act is insufficient in so far as it provides a framework for ASADA's monitoring role. The powers of the ASADA CEO are clear. The sporting administration body rules are clear, and the requirements of the NAD Scheme are clear. However, we see a benefit in addressing the concerns of ASADA by encouraging a greater collaboration between NISU, or the proposed NSIC, and the ASC for monitoring and in providing clarity in relation to the way in which non-compliance should be dealt with.

We see an advantage to vesting in the proposed NSIC powers that would be exercisable in conjunction with the ASADA CEO to respond to any perceived non-compliance by an NSO.

¹⁹³ Australian Sports Anti-Doping Authority, *Submission 10*.

¹⁹⁴ Coalition of Major Professional and Participation Sports, *Submission 20*.

Such a scheme could involve a differentiation between technical and serious non-compliance. It may involve warning notices; statutory periods within which issues should be rectified and certified as such. Failure to remedy non-compliance might result in sanctions including specific reductions in investment over the next funding cycle, or even loss of sports controlling body status. Such determinations might be challengeable in the General Division of the proposed NST.

RECOMMENDATION 18

That the Australian Sports Anti-Doping Authority's regulatory role and engagement with sports in relation to the audit and enforcement of sport's compliance with anti-doping rules and approved policies be enhanced by establishing regulatory compliance powers exercisable by the proposed National Sport Integrity Commission in collaboration with (and at the request of) the Australian Sports Anti-Doping Authority CEO.

4.3 OTHER REGULATORY MEASURES

ASADA's submission to the Review raised a number of additional issues which, in our view, warrant further consideration, as they fit comfortably with the broader recommendations regarding the exercise of its functions including strengthening its intelligence and investigative capability.

For the most part, these changes can be effected through relatively minor amendments to the ASADA Act.

EXTENDING STATUTORY PROTECTION AGAINST CIVIL ACTIONS TO COVER NSOS IN THEIR EXERCISE OF ADRV FUNCTIONS

Provided that the ASADA CEO, staff and engaged personnel act in good faith, the ASADA Act¹⁹⁵ establishes a suite of statutory protections for them against civil actions relating to:

- the performance or purported performance of any function of the CEO or
- the exercise or purported exercise of any power of the CEO.

This protects ASADA in its role when presenting evidence or material against an athlete or support person at a hearing, the issuing of an infraction notice, or in making recommendations about a provisional suspension.

However, under the sporting administration body rules (in the NAD Scheme), sporting administration bodies (NSOs) are also required to perform these functions (to the extent that they have not ceded this responsibility back to ASADA). The protections in the ASADA Act do not extend to protect NSOs from civil actions.

We agree with ASADA that the Government should consider whether it would be appropriate to extend this statutory protection to cover NSOs and their staff, particularly in circumstances where anti-doping matters are becoming more complicated.

FACILITATING BETTER INFORMATION SHARING BETWEEN ASADA AND NSOS THROUGH ENHANCING STATUTORY PROTECTIONS OVER INFORMATION PROVIDED TO AN NSO BY ASADA

ASADA collects information for the purposes of administering the ASADA Act and Regulations. When this information relates to the affairs of a person and is capable of identifying that person, the information is considered to be protected information.¹⁹⁶

Quite properly, the ASADA Act restricts the on-disclosure of protected information. While the information is held by an 'entrusted person' (essentially, an employee or agent of ASADA¹⁹⁷), the entrusted person can resist the production or disclosure of protected information, even under subpoena.¹⁹⁸

However, protected information may be disclosed to an NSO for the purposes of the ASADA Act, including information relating to possible anti-doping rule violations. This is a clear intention of the Act, given the role of NSOs in the anti-doping framework.

¹⁹⁵ Australian Sports Anti-Doping Authority Act 2006 (Cth) s. 78.

¹⁹⁶ Op. cit. s 4.

¹⁹⁷ Op. cit. s. 69.

¹⁹⁸ Op. cit. s. 67(3).

An NSO, cannot, like ASADA, resist a subpoena for the production and disclosure of the protected information, as NSOs and their staff are not 'entrusted persons' under the Act. ASADA is of the view that this:

... is currently a gap that exists in the legislation that may discourage the open sharing of information between ASADA and sporting administration bodies.¹⁹⁹

ASADA submits that section 67(3) – the provision which allows entrusted persons to resist subpoenas with respect to protected information – be amended to confer the same privilege on another person who has received the Protected Information in confidence from ASADA. COMPPS sports share this view:

We seek a system for greater protection of documents that are shared with sports as part of investigations. ASADA is currently reluctant to share documents with sport clients as those documents can become discoverable by third parties once they are in the hands of sports. We support ASADA's desire to be able to protect these documents more easily to protect them from subpoena/discovery when shared with the Sports.²⁰⁰

We see the merit in the proposal. Such an amendment should be considered by Government.

EXPANDING THE AUTHORITY OF THE ASADA CEO TO COMMENT ON CURRENT CASES

The ASADA Act provides that the ASADA CEO may only disclose *protected information* relating to an athlete or support person when public comments have been attributed to the athlete, support person or representative of those individuals.

ASADA is of the view that this is too restrictive, and prevents it 'correcting the record' on matters of media commentary which have not been attributed to a relevant person.

ASADA submits that:

... the scope of section 68E of the ASADA Act be broadened to enable the ASADA CEO to respond to public commentary when it is required to clarify the status of an ongoing matter.

The proposed new scope would enable the ASADA CEO to correct and clarify information in the public domain, whether that information has been attributed to an athlete, support person, or representative of those individuals or not. Such a change would greatly reduce inaccurate reporting relating to an individual's matter and allow ASADA to confirm or deny the existence of a case once it has entered the public domain and is being discussed.²⁰¹

The public disclosure provisions in the ASADA Act mean that once a matter is finalised, in most cases in which an ADRV is determined, relevant details will be published. The current legislative arrangements in the ASADA Act reflect the confidentiality and disclosure provisions of the Code:

Article 14.3.5:
'No Anti-Doping Organization or WADA-accredited laboratory, or official of either, shall publicly comment on the specific facts of any pending case (as opposed to general description of process and science) except in response to public comments attributed to the Athlete, other Person or their representatives.'

This issue warrants further consideration, including an examination of particular instances where the limits of this power of the ASADA CEO have caused difficulty. In our view, it would be appropriate in most cases for ASADA to remain above public commentary regarding ongoing matters (unless such commentary is directly attributable to the athlete or support person). As such, any relaxation of this provision would require clear guidelines.

EMPOWERING THE ASADA CEO TO EXERCISE DISCRETION IN RESPECT OF LOWER LEVEL ATHLETES TO APPLY MORE FLEXIBLE RULES UNDER CERTAIN CIRCUMSTANCES

As discussed above, the Code requires international and national-level athletes to be subject to the Code, leaving anti-doping arrangements for athletes below the national level to the discretion of the NADO.

The definition of 'athlete' in the ASADA Act for anti-doping policies is deliberately very broad, capturing almost all athletes who compete at any

199 Australian Sports Anti-Doping Authority, *Submission 10*.

200 Coalition of Major Professional and Participation Sports, *Submission 20*.

201 Australian Sports Anti-Doping Authority, *Submission 10*.

level of competition in Australia.²⁰² Under the Act, all 'athletes', regardless of level, are subject to the full extent of the Code, including sanctions.

The Code requires that *any* athlete subject to the Code and found to have committed an ADRV under clauses 2.1 (presence), 2.3 (evading) or 2.5 (tampering) must be subject to the full extent of *consequences* under the Code. There is, however, some flexibility for athletes below the national level for other ADRVs.²⁰³

ASADA seeks greater flexibility in its dealing with athletes below the national level.

For example, the ASADA CEO could have a power to issue formal warning letters to athletes and refer relevant intelligence gathered to sporting administration bodies to deal with the matter under relevant sport disciplinary rules or codes of conduct.²⁰⁴

AAA has also indicated that some flexibility in dealing with lower level athletes would be of benefit, particularly with respect to the ability of ASADA to engage with such athletes about doping issues, while not jeopardising efforts to increase participation:

Our main concern with ASADA is that it fails to exercise prosecutorial discretion when it would be appropriate to do so, such as where there is no question that the athlete did not intend to cheat, and the athlete's performance was not enhanced. We are concerned that ASADA has been overly zealous in these cases, in particular in matters involving lower level competitions, such as Victorian Football League, in which athletes play predominately for pleasure and are not provided the education and resources to assist them comply with the code.

If Australia seeks to increase participation in sport, it should seek to encourage participants rather than ban them from sport if they make an innocent mistake complying with complex and confusing regulations.²⁰⁵

ASADA submitted:

Appeal rights to bodies such as WADA or International Federations should not exist for lower level athletes where the ASADA CEO exercised a discretion to deal with a matter more flexibly.²⁰⁶

The existence of a greater degree of flexibility would assist ASADA in establishing an enhanced outreach and engagement with the Australian sporting community regarding the significance and risks of doping – including for 'pipeline' or 'up and coming' athletes below the national level.

We can see the value in the proposals of AAA and ASADA, including the exercise of greater degree of discretion in relation to lower level athletes, but sufficient guidelines would need to be developed to ensure a robust Code-compliant procedure, should it be implemented.

RECOMMENDATION 19

That the introduction of regulatory amendments to the *Australian Sports Anti-Doping Authority Act 2006* (Cth) (ASADA Act) be considered to provide for:

- extending statutory protection against civil actions to cover National Sporting Organisations (NSOs) in their exercise of Anti-Doping Rule Violation (ADRV) functions
- facilitating better information sharing between Australian Sports Anti-Doping Authority (ASADA) and NSOs through enhancing statutory protections over information provided to an NSO by ASADA
- empowering the ASADA Chief Executive Officer (CEO) to comment on current cases under broader circumstances than currently permissible under s 68E of the ASADA Act, including where misinformation has been published
- empowering the ASADA CEO to exercise discretion in respect of lower level athletes to apply more flexible rules in accordance with guidelines to be developed but maintaining compliance with the Code.

202 *Australian Sports Anti-Doping Authority Act 2006* (Cth) s. 4.

203 See Appendix B.

204 Australian Sports Anti-Doping Authority, *Submission 10*.

205 Australian Athletes' Alliance, *Submission 25*.

206 Australian Sports Anti-Doping Authority, *Submission 10*.

5. ANTI-DOPING EDUCATION

'Further to our efforts to detect and deter doping, the 2015 ADRVs Report reminds us of the importance that preventative education strategies play in the fight against doping. Values-based education is one of our core priorities as we engage with athletes to discuss what motivates them to stay clean, why they must not dope and how they can protect themselves against it.'²⁰⁷

— WADA Director General Olivier Niggli

Prevention is the first and most important line of defence against doping in sport and is achieved through effective engagement with participants, deterrence through effective and visible detection and enforcement and, critically, effective anti-doping education.

Athletes and support personnel are responsible for ensuring that they are 'knowledgeable of, and comply with all applicable anti-doping policies and rules adopted under the Code'.²⁰⁸ Ignorance of the anti-doping system resulting in a violation is not an effective defence – the Code operates essentially under a system of strict liability with respect to ADRVs.

International and domestic anti-doping arrangements can be complex and confusing. There must be sufficient emphasis on education to ensure that participants:

- have an effective, values-based understanding of the dangers of doping to health and to sport
- receive accurate and reliable information regarding anti-doping rules and banned substances and methods sufficient to avoid an ADRV, and an awareness of the risk of detection and consequences that apply.

Under the Code it is the responsibility of all signatories, and of governments, to encourage and promote anti-doping education.²⁰⁹ In Australia, this is reflected in the legislative framework – the ASADA Act emphasises the importance of education, outreach and support among the responsibilities of the ASADA CEO,²¹⁰ and the NAD Scheme requires NSOs to promote information and education about anti-doping programs.²¹¹

In our view, the current level of investment in anti-doping education and engagement by the sport sector and ASADA is insufficient and lacks the required impact, particularly below national-level athletes.

5.1 ANTI-DOPING EDUCATION DELIVERED BY THE SPORT SECTOR

Our Review has illustrated that Australian athletes at the international and national levels are, for the most part, receiving ongoing education regarding their rights, roles and responsibilities within the anti-doping framework. COMPPS sports for instance invest heavily in education at the elite levels as part of their integrity infrastructure:

The Sports take threats to the integrity of their sport, and sport generally, extremely seriously. For this reason, each of the Sports prioritises the education of players and officials.

While integrity trends and threats are constantly evolving, the Sports are constantly reviewing and updating their education programs to address any emerging threats. The education programs are adequate at addressing integrity threats.²¹²

However, even at the elite level, a need for a greater investment by Sports in anti-doping education and training was identified. For instance, the AAA submitted:

There is substantial confusion over many substances and the science behind some critical anti-doping detection methods (e.g. the test for HGH (NFL case) and the biological blood passport (Pechstein case)). Some of the banned substances have not been shown to enhance performance. Athletes need to have clear knowledge on what is banned and why.²¹³

207 World Anti-Doping Agency, 'WADA Publishes 2015 Anti-Doping Rule Violations Report' (media release), 3 April 2017, <<https://www.wada-ama.org/en/media/news/2017-04/wada-publishes-2015-anti-doping-rule-violations-report>>.

208 *World Anti-Doping Code*, World Anti-Doping Agency (effective as of 1 January 2015), art. 21.1.

209 *Op. cit.* a. 18.1.

210 *Australian Sports Anti-Doping Authority Act 2006* (Cth) s. 21(f).

211 *Australian Sports Anti-Doping Authority Regulations 2006* (Cth) Schedule 1, p.2.04(f).

212 Coalition of Major Professional and Participation Sports, *Submission 20*.

213 Australian Athletes' Alliance, *Submission 25*.

Swimming Australia indicated that there was often confusion or misunderstanding on the part of athletes and support personnel as to which organisation is doing or should be doing the testing (ISO, NSO or ASADA on behalf of the Government), and where the responsibility lies for the management of results, more so when the doping control officers can be the same people collecting samples for different organisations.

While sports at the elite level generally have sufficient resourcing to enable independent education services, and some use ASADA's services for education and training, the position is not the same for some of the smaller and less well-resourced sports, which face challenges in maintaining a contemporary program on an ongoing basis.

5.2 ASADA'S EDUCATION PROGRAM

As noted above, anti-doping education must be a collaborative effort, and the Government through ASADA also has a role to play.

In 2016–17, ASADA's core education products were two eLearning (online) courses (levels 1 and 2) designed for anyone participating in sport, and face-to-face workshops for athletes and support people.²¹⁴ More than 17,500 people completed the eLearning courses, and 2,629 people participated in face-to-face training with ASADA over 62 sessions. ASADA was very successful in promoting awareness of the 'Check your Substances' online tool, more than doubling the number of searches using the tool in 2016–17 compared with 2015–16.

In addition to the Level 2 anti-doping course, ASADA invested in three new education tools in 2016–17:

- the Ethical Decision Making in Sport course (developed with the NISU, and winner of the LearnX Impact Award for 2017)
- school lesson plans
- a medical support personnel course.

Generic learning modules of the kind used by ASADA are a critical tool for ensuring that anti-doping education programs have a wide

reach and also comply with current knowledge and developments. However, it emerged even among major stakeholders, including COMPPS and AAA, that there was a perceived need for greater engagement with ASADA in the development and delivery of contemporary education packages.

ASADA should be more active in test planning, public campaigning against doping (the UKAD is very effective in this space) and working with sports and governments to generate adaptable education and resources rather than the generic platforms that are produced, apparently without consultation with sport.²¹⁵

Swimming Australia indicated that centrally developed and delivered programs relevant to all sports would be appropriate:

Education is obviously critical to prevention. All sports have the same or very similar integrity educational requirements. It makes sense that there is a central agency to guide, develop and offer education for all persons involved in all sports, instead of sports tackling this themselves with varying degrees of impact and success. In order to assist, high quality education programs are required at the elite level, as well as at the pathway level.²¹⁶

A clear need for more work by ASADA at the subelite level was also identified. The gap in ASADA's involvement in face-to-face education at this level was noted by COMPPS:

ASADA offers face-to-face training sessions free of charge to national teams and squads of recognised national sporting organisations, while charging other groups for training sessions. ASADA training sessions cost organisations \$576 for the first hour, \$146 for additional hours and organisations must cover additional expenses such as flights and accommodation. These fees are prohibitive for many organisations that sit below the national level and forces them to rely on online resources.²¹⁷

214 Australian Sports Anti-Doping Authority, '16–17 ASADA Annual Report', p. 64.

215 Coalition of Major Professional and Participation Sports, *Submission 20*.

216 Swimming Australia, *Submission 14* (National Sport Plan).

217 Coalition of Major Professional and Participation Sports, *Submission 20*.

5.3 INCREASED INVESTMENT IN EDUCATION IS NEEDED, PARTICULARLY AT SUBELITE LEVELS

Two themes emerged regarding education:

- Sports are seeking greater guidance and assistance from the Government – specifically ASADA.
- Investment by the Australian Government and the sporting sector in anti-doping education below the elite level is insufficient.

In our view, more training is required by the sporting sector for all participants – athletes, athlete support personnel (including parents, coaches, administrators, officials, medical staff et al) and NSO and SSO executive teams, to ensure that athletes acquire a better understanding of their rights and responsibilities, and the reasons for them.

While more training and education is needed, we believe that there is a need to unify resources and educational policies that apply to athletes. In our view, ASADA should take the lead in working with organisations across the Australian sporting landscape to unify anti-doping education and training resources. Athletes and support personnel should have, for their particular sport at their level, as close to a single source of 'truth' as can be managed – reducing unnecessary confusion and complexity in an already highly complex environment.

The benefits of online education programs are obvious; particularly that they are accessible to a very wide audience at a very low cost per person. ASADA's emphasis on developing and delivering high-quality²¹⁸ anti-doping education tools that are available to all members of the Australian community has been valuable. But a number of stakeholders are concerned that anti-doping education 'drops off' quite sharply at the subelite and community levels. COMPPS submitted:

The Sports face resource constraints in educating participants that sit below the elite level due to the large number and geographical spread of participants.

The resource and governance restraints faced by the Sports means that educational programs aimed at competitions that sit below the elite and semi-elite level could benefit from public or shared resources.

Some of the Sports have found the online resources offered by ASADA and NISU useful in educating participants in competitions that sit below the elite levels. However, the Sports suggest that these resources could be more effective if supplemented with face-to-face education programs.²¹⁹

We share the view that online education needs to be complemented by face-to-face sessions for all levels of sport, including those below the elite level, and that these should be developed in partnership with sports to ensure that the particular nuances of individual sports are captured.

Face-to-face sessions need to be more accessible, but ASADA does not have the resourcing to achieve this alone, nor would it be appropriate for ASADA to shoulder this responsibility alone.

In the UK, a very significant investment has been made in developing a suite of anti-doping education and training resources with sports. Specific resources are available for athletes and support personnel, coaches, parents and education partners, facilitating a sports-specific outreach employing a network of volunteers and officers funded by UKAD and sporting organisations, through its Education Delivery Network.

218 ASADA's Level 1 anti-doping course has won several awards, and provides 'an experience that focuses on the needs of athletes rather than on 'tick the box' administration.'

219 Coalition of Major Professional and Participation Sports, *Submission 20*.

THE UKAD EDUCATION DELIVERY NETWORK

UKAD, like ASADA, works on a limited budget. However, there has been a strong and very effective focus in recent years on anti-doping education and training, from grassroots to the elite level.

UKAD indicated to us that its internal education team was limited – around five full-time staff. However, its Education Delivery Network helps it achieve significant reach into the sporting community. UKAD is able to deliver significant and high-profile training programs through a system that uses trained anti-doping advisers, educators and national trainers to deliver anti-doping education sessions. The current program has trained more than 350 anti-doping professionals.

The Education Delivery Network consists of the following roles:

- **Advisers:** trained personnel who can advise athletes on anti-doping good practice and direct them effectively to further information. Advisers are independent of UKAD and NSOs.
- **Educators:** trained personnel, normally within a specific sport or sporting agency, who can educate through fun, interactive and thought-provoking sessions. Educators must first register with an NSO, who will then register interest with UKAD for accreditation.
- **National trainers:** UK Anti-Doping personnel who support and educate not only athletes and athlete support personnel but the rest of the Education Delivery Network as well. National trainers are employed by UKAD.²²⁰

The UKAD Education Delivery Network offers an excellent example of a shared investment in education between sports and government, and we encourage ASADA and the sporting sector to consider a similar model.

Other countries have made a significant investment in sports training and education, and ASADA would benefit from connecting with NADOs around the world to develop best practice contemporary programs that incorporate values-based education.

For example, the Japanese Anti-Doping Agency has established an initiative designed to give Japanese pharmacists an in-depth knowledge of anti-doping rules and requirements, helping them to avoid providing advice that might inadvertently lead to an ADRV, and at the same time boosting athletes' confidence that they are receiving informed advice about health and medical issues that takes their status as an athlete into account.

Drug Free Sport New Zealand runs Good Clean Sport – Youth, which aims to educate young athletes on clean sport within the secondary school environment. As part of this initiative, information and advice about the use of supplements is included in the workshops.

WADA offers a range of different anti-doping education programs on its website. For example, its latest tool, titled 'Parents' Guide to Support Clean Sport',²²¹ was designed to inform parents of athletes how they can enhance their child's knowledge of how to protect themselves in their sporting career.

RECOMMENDATION 20

That the Australian Sports Anti-Doping Authority and the sports sector should increase their respective investments in anti-doping education, collaborating to deliver more effective education and training packages with greater reach below national-level athletes (with the benefit of the example provided by United Kingdom's Anti-Doping Education Delivery Network, World Anti-Doping Agency and other education programs established by other National Anti-Doping Organisations). Education and training programs to focus on:

- information on the testing process and allied rights of athletes
- the need for values-based education.

220 United Kingdom Anti-Doping, <<https://ukad.org.uk/education/edn/about/>>, accessed 13 December 2017.

221 World Anti-Doping Agency, <https://www.wada-ama.org/sites/default/files/html5/edu_parents_cleansport/en/?page=2>, accessed 21 December 2017.

6. RESOURCING, ENGAGEMENT WITH SPORT AND ANTI-DOPING TESTING

Detection is a core component of any anti-doping program. As Australia's NADO, ASADA has detection as one of its core functions, carried out through a combination of intelligence and investigation, and through the anti-doping testing program.

Currently, the Australian anti-doping program is well regarded, and ASADA is an internationally respected NADO. However, in the absence of significant reform with respect to testing, investigations and engagement, including a review of current resourcing and laboratory cost arrangements, the anti-doping program in Australia will struggle to meet the current and foreseeable doping challenges. As COMPPS submitted:

... current arrangements are not capable of adequately addressing the doping threat. Specifically, we contend that the Sports are not being given the support that they require by ASADA to effectively combat the current doping threat.²²²

6.1 RESOURCING AND ASADA'S ONGOING FINANCIAL SUSTAINABILITY

Underpinning the ability of any NADO to deliver an effective anti-doping program is resourcing. ASADA has a relatively modest operational budget. In 2016–17, ASADA's Government appropriation was about AU\$12 million. Testing, including sample analysis, storage and other expenses, accounted for more than a quarter of this – AU\$3.38 million.

In our view, ASADA is currently under-resourced, and lacks the financial sustainability required to effectively leverage existing organisational experience and expertise, and develop and implement the kind of anti-doping program required as doping becomes more sophisticated and harder to detect. ASADA submitted:

ASADA's legislative framework and capability has gradually been expanded over the last decade, but no specific funding increases have occurred to match more recent shifts in the global anti-doping threat. For example, the 2015 version of the World Anti-Doping Code (the Code) placed greater emphasis on non-analytical anti-doping rule violations and intelligence and investigation resources required by NADOs. There has also been a need to monitor more closely National Sporting Organisations (NSOs) and their compliance with increasingly complicated and more flexible anti-doping rules.²²³

Of particular concern for ASADA's budget and competitiveness is the current cost of sample analysis. Budgetary pressures are already manifesting in an insufficient engagement with sports, both at elite and sub-elite levels, and in an inability to improve and expand the current testing regime. COMPPS sports noted that:

ASADA is insufficiently funded and under resourced to effectively and efficiently respond to the needs of the Sports. Accordingly, ASADA has been unable to satisfactorily perform a number of its vital functions that support the Sports' ADRV processes.

One sport reports that its biggest problem is getting ASADA to agree which teams/athletes will be tested and then providing the missions to go out and do the tests.

This is an outcome of not having sufficient sport support staff that can manage multiple sport clients.

222 Coalition of Major Professional and Participation Sports, *Submission 20*.
223 Australian Sports Anti-Doping Authority, *Submission 10*.

In particular, we highlight the following functions of ASADA, as set out in the Act and Regulations, as areas in which the Sports require, but are not adequately receiving, highly specialised and targeted support:

- testing for atypical samples
- undertaking results management
- conducting investigations into possible ADRVs
- providing advice and guidance on technical matters related to ADRV processes.²²⁴

6.2 ENGAGEMENT WITH SPORTS

We accept that engagement in relation to testing is a critical part of ASADA's anti-doping strategy. Close collaboration with the sporting sector permits it to have a greater awareness of the risks and challenges particular to individual sports. It also allows sports and athletes to acquire a greater understanding of the anti-doping program and procedures and assists in the development of the relationship of trust that is essential to the conduct of effective, intelligence-led investigations.

In 2016–17, ASADA engaged with 19 sporting organisations (at the national level), presented at three forums and worked closely with Commonwealth Games Australia, the Australian Olympic Committee and the Australian Paralympic Committee to minimise the risk of doping at upcoming major events.²²⁵

ASADA advised:

Our work with Australian professional sporting bodies continued to develop during 2016–17. Through closer working relationships, ASADA was able to assist key sports to fast-track critical cases and share intelligence. Closer collaboration with the integrity units of professional sports, including the sharing of scientific analysis, has been a feature of 2016–17.²²⁶

Effective engagement is closely related to responsiveness – closer relationships with stakeholders will result in a better ability to respond to doping issues as they arise. ASADA acknowledges that this is an area that requires greater focus:

[Our] intelligence capability will need to be able to reach in to where the knowledge is held in relation to who is doping, why and how. Consequently, close and trusted relationships with sports, governing bodies and athletes themselves will be a necessary future focus ...²²⁷

This is reflected in submissions received from sports, which noted that, on some occasions, ASADA had not been as responsive as it had been in the past. For example, COMPPS indicated that:

One sport reports that ASADA has been presented with what was, in the sport's opinion, prima facie evidence of matters warranting further follow up to determine if an ADRV has occurred, and ASADA was reluctant to investigate.²²⁸

and that:

Another sport reported that the problem is that ASADA does not act in a timely manner – for example, it takes too long for ASADA to come to the sport with details on an atypical finding and it does not put in place steps to follow up, by which time the opportunity to detect an ADRV may have passed.²²⁹

However, this has not been the experience of all COMPPS sports:

Another sport is comfortable with ASADA's role in this area and reports that ASADA has provided 'tipoffs' about suspicious activity from time to time.²³⁰

It is vitally important that ASADA renews its focus on engagement with sports including, where possible, organisations and athletes below the elite level so as to allow a greater understanding of its testing processes. It is anticipated that some further government support may be required, as well as co-investment and partnerships with sporting organisations.

Better engagement strategies, as well as increased resources to allow this to occur, will be critical in developing the kind of intelligence and investigative capability needed to address modern and future doping threats.

224 Coalition of Major Professional and Participation Sports, *Submission 20*.

225 Australian Sports Anti-Doping Authority, '16–17 ASADA Annual Report', p. 53.

226 Australian Sports Anti-Doping Authority, *Submission 10*.

227 Ibid.

228 Coalition of Major Professional and Participation Sports, *Submission 20*.

229 Ibid.

230 Ibid.

RECOMMENDATION 21

That the Australian Government ensure that the Australian Sports Anti-Doping Authority is adequately resourced and financially sustainable, enhancing its capacity to engage with sports and be an effective and responsive regulator and National Anti-Doping Organisation.

6.3 ASADA'S ANTI-DOPING TESTING PROGRAM AND IMPACT OF SAMPLE ANALYSIS COSTS

ASADA's anti-doping testing program comprises government-funded testing and user-pays testing, under which ASADA conducts sample collection and

analysis under contract with sporting organisations. Testing is conducted in competition and out of competition, in Australia and overseas,²³¹ on a 'no advance notice' basis, and includes collection of blood or urine or both.

ASADA is a sample collection agency and retains results management responsibility for those samples collected under government funding (as distinct from those collected under user-pays arrangements, discussed below). Australian Government policy requires ASADA to conduct sample analysis through the Australian Sports Drug Testing Laboratory (ASDTL), administered by the National Measurement Institute (NMI), within the Department of Industry, Innovation and Science.

In 2016–17, ASADA conducted 5,658 tests across 39 sports. Table 2 below presents sample analysis statistics.

Table 2: ASADA sample analyses 2016–17

Test type	Tests
Government-funded tests	3,029
In competition	944
Out of competition	2,085
User-pays tests	2,629
In competition	835
Out of competition	1,794
Total tests collected	5,658
Athlete biological passport tests	923
Government funded	668
User pays	255

Source: Australian Sports Anti-Doping Authority 16-17 Annual Report (20 October 2017)

231 In 2016–17, Australian athletes were tested by ASADA in 15 countries.

AUSTRALIAN SPORTS

In 2016–17 ASADA conducted testing under user-pays arrangements for the following Australian sports:

- Australian Canoeing
- Australian Natural Body Building
- Australian Rugby Union
- Badminton Australia
- Boxing Australia
- Bowls Australia
- Confederation of Australian Motor Sport
- Cricket Australia
- Darts Federation of Australia
- Diving Australia
- Football Federation of Australia
- Golf Australia
- Judo Federation of Australia
- National Basketball League
- National Rugby League
- Netball Australia
- Royal Life Saving Society of Australia
- South Australian National Football League
- Stawell Athletic Club
- Surf Life Saving Australia
- Swimming Australia
- Triathlon Australia
- Victorian Football League
- Volleyball Australia

ENGAGEMENT AT THE STATE AND TERRITORY LEVEL

A user-pays arrangement established with the Government of Western Australia for the testing of athletes competing at the state level continued in 2016-17. In our view this is a valuable initiative, extending ASADA's engagement with athletes past the national level, and helping to ensure that up-and-coming athletes competing at the state level experience a thorough anti-doping testing program.

INTERNATIONAL EVENTS

Under contract with international sporting organisations, ASADA collects samples from athletes who are in Australia in the lead-up to international sporting events held here. In 2016–17 ASADA did this on behalf of the:

- Badminton World Federation
- International Swimming Federation (FINA - Federation Internationale de Natation)
- International Volleyball Federation (FIVB - Federation Internationale de Volleyball)
- International Federation of Gymnastics (IFG - Federation Internationale Gymnastique)
- International Association of Athletics Federations
- International Triathlon Union
- International University Sports Federation
- International Waterski and Wakeboard Federation
- International Weightlifting Federation
- World Squash Federation
- World Triathlon Corporation

To put ASADA's testing program in context, in 2015 (using the most recent available WADA data), ASADA conducted 4,631 tests, placing it only behind the NADOs of Russia, China, Germany, France, the United States, India, the United Kingdom, Italy and Japan in tests conducted.²³²

In its 2016–17 annual report, ASADA indicates that 87% of respondents to the stakeholder survey thought that ASADA's testing activities were effective at helping to deter doping.²³³

Submissions from some sports supported this finding, including some of the 'medal sports'.

In our view, ASADA's testing regime is for the most part quite effective, allocating limited resources strategically by developing a strong intelligence-based foundation through the Test Distribution Plan. ASADA has the *capability and competencies* that it needs to deliver a world-leading testing program. However, it is critical to the integrity of sport in Australia that ASADA has the *capacity* to provide a high-level service to Government and to sport. This can only be achieved if:

- ASADA's funding and mandated outgoings (including lab costs) are financially sustainable, supporting broad ranging government-funded testing programs and investigations to detect doping
- ASADA conducts the majority of (if not all) user-pays testing in Australia, including for major domestic and international events²³⁴ contributing to broad-based gathering of intelligence.²³⁵

USER-PAYS TESTING

User-pays testing assists ASADA to execute its role in a number of ways. It helps increase ASADA's testing coverage above the level achievable through its government appropriation, and supports engagement and relationship building with sporting organisations. It is also a means of acquiring valuable intelligence.

In 2016–17, ASADA conducted user-pays testing on behalf of 26 Australian sporting organisations, 11 ISOs (international federations) that held events in Australia, and on behalf of the Western Australian Government.

Generally, ASADA's user-pays arrangements are comprised of:

- sports that are not Olympic or Commonwealth Games sports
- events where ASADA does not maintain Testing Authority
- professional or semi-professional sport or competition
- individual contracts with ISOs to provide out-of-competition testing of international-level athletes in Australia.

More testing means better intelligence

ASADA is one of few NADOs that uses intelligence gathered through sample testing. It gleans valuable intelligence from testing activities done under user-pays arrangements that would otherwise be unavailable, and through understanding athlete linkages to support personnel and other members of the community. This can help ASADA to disrupt PIED distribution networks:

'ASADA investigates those involved in positive tests to understand the context in which the doping has occurred, who else was involved, how access to banned substances was obtained, and other knowledge relevant to the matter, as warranted. In doing so, ASADA maximises its understanding of the environment in which doping occurs, and of the methodologies and the attitudes of those involved in doping.'²³⁶

232 World Anti-Doping Agency, '2015 Anti-Doping Testing Figures', p. 11, <https://www.wada-ama.org/sites/default/files/resources/files/2015_wada_anti-doping_testing_figures_report_0.pdf>.

233 Australian Sports Anti-Doping Authority, '16–17 ASADA Annual Report', p. 38.

234 As a mandated part of applying for Commonwealth funding and assistance for major events.

235 Even in the event that ASADA is not the results-management agency for user-pays testing, information and intelligence gathered through this testing may be fed back into ASADA investigations.

236 Australian Sports Anti-Doping Authority, '16–17 ASADA Annual Report', p. 25.

Current costs of sample analysis are unsustainable

ASADA submitted that user-pays testing generates approximately AU\$1.8 million a year. However, this represents contribution rather than profit, as testing on behalf of Australian sports (over and above that which might be government funded) is heavily subsidised by ASADA due to the cost of analysis charged through the ASDTL.

ASDTL's fees for testing services are very high – particularly in comparison to most other WADA-accredited laboratories which are competing for user-pays business with ASADA. ASADA submitted that:

The current structure and cost of the NMI laboratory arrangement is the largest current sustainability risk to ASADA.²³⁷

In 2017, ASADA commissioned Deloitte Australia to provide an analysis of its laboratory costs,²³⁸ which found that:

'ASDTL fees are in excess of other WADA accredited or approved laboratories. They are 49% higher than the benchmark price and if laboratory costs increase to \$3.0m in FY17, as proposed by the [National Measurement Institute], this differential would rise to \$1.22m or 69%.'

In our view, there is no question that current financial arrangements for sample analysis are unsustainable, and prevent ASADA from offering a commercially competitive product, including for international events in Australia where the 'user-pays' market dominates.

In recent years as laboratory costs have been rising, ASADA has been unable to recover its costs in full, as passing on these costs would likely drive user-pays clients to independent sample collection agencies using other, less expensive, WADA-accredited laboratories:

... commercial sample collection providers have a large price point advantage against ASADA by virtue of their ability to send samples to other overseas WADA accredited laboratories. This advantage is even larger where the costs of the overseas laboratory are less than the international benchmark price. This disparity creates a real risk to ASADA's user pays revenue and the crucial intelligence that ASADA gains by performing these sample collections for major Australian sports.²³⁹

In fact, ASADA has already experienced a reduction in user-pays arrangements as costs drive sports to use cheaper alternatives:

In 2014 as a result of competing integrity resource priorities for our [user-pays] clients, the perceived high cost/low value of WADA accredited testing, and an unwillingness to accept cost increases above CPI, demand for [user-pays] testing declined by 30% on long-term trends.²⁴⁰

Australian sports are required to submit to ASADA's government-funded testing regime but they are not required to contract ASADA to collect samples and conduct analysis for user-pays testing. Many sports still conduct testing through ASADA to project and promote a higher level of integrity by using the national agency; however, costs are reaching a threshold level where sports may turn to independent sample collection organisations, which will seriously undermine ASADA's ability to continue operations under current budget pressures:

Some of the Sports prefer to engage private testing agencies (where possible) instead of ASADA for [testing and results management] purposes. Private agencies are also more cost effective for the Sports that use their services.²⁴¹

This gives rise to a further concern. Such independent sample collection organisations are not signatories to the Code, and are not seemingly subject to the present compliance program run by WADA.

237 Australian Sports Anti-Doping Authority, *Submission 10*.

238 Deloitte, 'ASADA laboratory costs benchmarking analysis', 9 August 2017.

239 Australian Sports Anti-Doping Authority, *Submission 10*.

240 Ibid.

241 Coalition of Major Professional and Participation Sports, *Submission 20*.

Testing at major events and through international federations

ASADA has been at a major disadvantage with respect to major international events, and other testing required by international federations. In the 2016 calendar year, ASADA was the sample collection authority for less than 21% of all tests requested by international federations within Australia.²⁴²

International Federations are frequently partnering with cheaper commercial providers when they hold sporting events in Australia. This creates a large intelligence blindspot for ASADA in relation to Australian and overseas athletes entering into the country to compete.

ASADA currently does not perform any anti-doping services at regular major sporting events in Australia such as the Australian Open tennis or UCI Tour Down Under. There have also been historical or upcoming major events where ASADA has not been engaged to collect samples. For example, the FIFA Asian Cup, the Rugby Union World Cup, the Rugby League World Cup. International Federations such as FINA also engage commercial sample collection providers to collect samples from athletes in Australia instead of using ASADA. There is therefore a very large amount of intelligence that ASADA simply does not receive due to our lack of ability to compete against commercial providers on the issue of the cost of our services.²⁴³

In our view, the current issues need to be dealt with as a matter of priority. Analysis costs (including costs associated with long-term storage of samples for retrospective analysis) must be re-set at a level that enables ASADA to win user-pays arrangements with Australian and international sporting organisations (with all the associated benefits of those arrangements). Sustainable analysis costs would also enable ASADA to broaden its independent, government-funded testing program in line with its strategic priorities and help in building its intelligence collection.

RECOMMENDATION 22

That the Australian Government resolve long-standing issues regarding the costs and sustainability of the sample analysis system in Australia to enable an effective testing program and ensure that the Australian Sports Anti-Doping Authority is commercially competitive in the user-pays market.

242 ASADA notes that this does not include international athletes tested in Australia by another SCA – these are not visible in the WADA Anti-Doping Administration and Management System (ADAMS). This means that the percentage would in fact be less than 21%.

243 Australian Sports Anti-Doping Authority, *Submission 10*.

7. INVESTIGATIONS AND INTELLIGENCE

Detection efforts have traditionally focused on sample collection and analysis. However, with the increasing sophistication of doping means and methods, detection has become increasingly difficult:

The number of cases of doping identified through testing and other means are almost certainly an under representation of the actual scope of doping in ... sport. Indeed, unless there is specific, targeted and timely intelligence in relation to doping individuals or groups, it is likely that testing regimes will only identify those athletes undertaking relatively unsophisticated doping.²⁴⁴

This has placed a greater emphasis internationally on non-analytical investigation and intelligence gathering to develop more effective targeted testing regimes as well as to assist in the detection and proof of ADRVs through non-analytical methods.

Nine of the 10 types of ADRV in the Code are established through evidence collected through intelligence and investigations, rather than AAFs or 'positive tests'. Many of the high-profile successes in the fight against doping have been based largely on intelligence and investigations, relying on evidence obtained through cooperative engagement between NADOs, the sporting sector and state and territory authorities.

In 2016–17, 76 matters were referred to ASADA's investigations team, ranging from straightforward to complex matters involving multiple athletes and athlete support people across a number of sports. Sixteen of these investigations remained active at the time of reporting (30 June 2017).

To put ASADA's investigative activities in a global context, in 2015, Australia recorded seven non-analytical ADRVs while, globally, 280 non-analytical ADRVs were recorded including 57 in Italy and 18 in France. Both Italy and France have, unlike Australia, enacted doping-related criminal offences, providing a greater mandate to law-enforcement agencies (additional to relevant NADOs) in those countries to conduct intelligence-led investigations.

Over time, ASADA's intelligence gathering and investigation capacity has been enhanced through better information sharing arrangements with other

government agencies, and the establishment of the coercive powers that are vested in the ASADA CEO, who can require someone to assist with an investigation by issuing a disclosure notice. However, there are limitations to ASADA's current capacity to lead effective intelligence-based investigations, and we agree with ASADA's view that a more robust capability will be required to address contemporary threats:

It is clear that, while testing will remain an important tool in any anti-doping regime, the current risk environment demands a considered and strategic approach to prevention and identification of anti-doping rule violations that goes beyond traditional interventions. In particular, a robust and layered intelligence collection and analysis strategy and capability will be essential to uncovering and treating contemporary sophisticated doping. That intelligence capability will need to be able to reach in to where the knowledge is held in relation to who is doping, why and how.²⁴⁵

It is our view that the current suite of statutory protections and powers under the ASADA Act are not sufficient to facilitate ASADA's increasing emphasis on intelligence-based investigations, and that in the absence of significant reform, Australia's anti-doping program will be unable to address current and foreseeable future doping challenges as effectively as it should.

7.1 CLEAR GUIDELINES FOR ENGAGEMENT

It is clear that a critical preliminary step in enhancing ASADA's intelligence and investigative capability will be to develop, through collaboration with the sporting sector, effective guidelines for cooperation in the conduct of anti-doping investigations.

We believe that there is a need to revisit and possibly revise any internal ASADA policies concerning its investigative procedures for intelligence-based investigations. This would assist in providing certainty to stakeholders regarding their roles and responsibilities. COMPPS, for instance, submitted that they do not have clear guidance on when and how to engage with ASADA to respond to and investigate potential ADRVs:

²⁴⁴ Ibid.
²⁴⁵ Ibid.

Under the sport's anti-doping policy, often the sport shares responsibility with ASADA for a number of key ADRV functions and processes, including investigating possible ADRVs, information sharing and results management.

The current delineation of roles and responsibilities in responding to an alleged ADRV is blurred and ambiguous. For example, at times, the onus of pursuing an investigation falls on the sport, while at other times, ASADA will insist on leading the investigation.

When questioned by Sports on this issue, ASADA has failed to provide the clarity and certainty required to enable ADRV matters to be effectively managed. Additional resourcing and pre-emptive management from ASADA would help to achieve this clarity.²⁴⁶

Given the collaborative nature of the anti-doping effort in Australia, it is essential that ASADA and the sporting sector work together to clearly define their respective roles and responsibilities in the conduct of intelligence-based investigations and to ensure that their resources are deployed in the most efficient way. This is particularly important with respect to COMPPS sports, to take advantage of the significant investments that they have made in developing their own integrity capability. ASADA and COMPPS must work together to ensure that duplication is avoided and resources are deployed in the most efficient and effective way.

INFORMATION AND INTELLIGENCE GATHERING LINKS

Recognising the value of intelligence in detecting doping in sport, ASADA has in recent years improved its intelligence-based investigative capacity.

It is assisted by partnerships with the Department of Home Affairs, the Australian Federal Police (AFP), Australia Post, the Australian Electoral Commission (AEC), the Therapeutic Goods Administration (TGA) and state and territory agencies.

However, there are limits to the exchange of information between ASADA and other agencies with overlapping interests, including with respect to application of the *Privacy Act 1988* and other related state-based privacy legislation. COMPPS sports have acknowledged this limitation:

In particular, the Sports acknowledge that work needs to be done on developing policy to improve information sharing arrangements between Government, law enforcement agencies and the Sports. If the Sports are to promptly and effectively detect, investigate and sanction ADRVs, the information sharing function between these bodies must be enhanced.²⁴⁷

Some of the limitations on other Australian Government agencies disclosing information to ASADA might be remedied if ASADA were considered a 'law-enforcement body'.

Our preliminary view is that if possible, this should be effected through an amendment to the Privacy Regulation 2013 prescribing ASADA as a 'law-enforcement body', and ADRV activities under the NAD Scheme as 'enforcement-related activity'. This would enable organisations to disclose information to ASADA if the belief is formed that it would be necessary for the administration of ADRV-related activities.

A major benefit of establishing a NSIC as proposed later in this report, that is able to work with ASADA, would be the establishment of a capacity to bring together all of the 'sports integrity threads' into one place – enabling fast and effective communication, information sharing and intelligence gathering, particularly if, as recommended, it is designated a law-enforcement body.

This view was shared by UKAD in consultations, which indicated that having a central sports integrity agency would help in 'seeing things in the round'. As such, it is our view that while ASADA should continue to develop collaborative working relationships with law-enforcement and other regulatory agencies, ASADA should eventually focus its intelligence and investigatory efforts on collaboration *through* the proposed NSIC.

²⁴⁶ Coalition of Major Professional and Participation Sports, *Submission 20*.
²⁴⁷ *Ibid.*

7.2 STRENGTHENING ASADA'S DISCLOSURE NOTICE REGIME

Critical to the ASADA's investigative capacity is the power of the ASADA CEO to issue a disclosure notice requiring an individual or entity to assist with an investigation. Disclosure notices can require a person to attend an interview to answer questions, give information, or produce documents or things.

There are some elements of the disclosure notice framework that, in our view, should be enhanced to strengthen ASADA's investigative capabilities.

THRESHOLD FOR ISSUE OF A DISCLOSURE NOTICE

The ASADA CEO can only issue a disclosure notice if he or she *reasonably believes* that the person has information, documents or things that may be relevant to the administration of the NAD scheme.²⁴⁸

As we understand it, the threshold of 'reasonable belief' means that disclosure notices are generally only sought, and granted (by the ADRV), in circumstances where ASADA already has evidence that might suggest that an ADRV has taken place – for instance, in connection with an AAF. In circumstances where ASADA suspects that an ADRV has taken place but lacks evidence, disclosure notices would not be available to ASADA to progress the matter.

In our view, the statutory threshold for the issue of a disclosure notice should be that of 'reasonable suspicion'. A 'reasonable suspicion' threshold for the exercise of similar powers is relatively commonplace in comparable statutory schemes and would be appropriate in these circumstances.

PRIVILEGE AGAINST SELF-INCRIMINATION

There are also limits to ASADA's coercive powers once a disclosure notice has been granted. Section 13D (1) of the ASADA Act allows a person to claim privilege against self-incrimination when answering a question or providing information to ASADA. A person cannot claim privilege against self-incrimination in relation to a requirement to produce a document or thing.

To enable ASADA to effectively execute its intelligence and investigative functions, the right to claim privilege against self-incrimination, when answering a question or providing information to ASADA, should be excluded. However, it is expected that the same protections against non-direct or derivative use in criminal prosecution would exist as they currently do under 13D(2) of the ASADA Act, in respect of providing a document or thing.

This would, in effect, harmonise the exercise of ASADA's powers across the provision of information whether at an interview or by provision of a 'document or thing'. It would also bring ASADA's powers to compel evidence from a witness into line with the powers of investigators acting on behalf of many NSOs (as a result of clauses in player contracts).

PENALTIES FOR NON-COMPLIANCE AND POWER TO INSPECT

The Panel understands that in some cases, athletes and support personnel may not have taken requests made by the ASADA CEO through the issue of a disclosure notice as seriously as they might, or have sought to avoid disclosure. For instance, it was submitted that in some cases, requests for mobile devices were met with claims that they had been lost, or alternatively, investigators had found that devices had been 'wiped' prior to production.²⁴⁹

Currently, a failure to comply with a disclosure notice issued by the CEO attracts a maximum of 30 penalty units – equating, at 1 July 2017 to \$6,300. Consideration should be given to increasing this penalty significantly, to communicate, effectively, the significance of non-compliance.

Also, consideration could be given to establishing powers of inspection – in the event that there is reasonable suspicion that disclosure notice has not been complied with (such as in the case that it is claimed that a mobile device has been lost), enabling the CEO to grant limited powers of inspection to ASADA investigators.

²⁴⁸ A notice may only be issued if three members of the Anti-Doping Rule Violation Panel agree in writing that the belief of the CEO is reasonable.
²⁴⁹ Mr Ben McDevitt AM APM, consultation meeting, 17 August 2017.

7.3 ESTABLISHING WHISTLEBLOWER PROTECTIONS

Earlier in the report, we examined some of the issues associated with the closed environment around many sporting organisations, and the 'sport runs sport' protectionism that can result, both in relation to doping and other forms of integrity breach.

This can manifest itself in a reluctance of sporting organisations to share information with authorities regarding integrity threats and in concerned athletes and other 'insiders' being reluctant to speak out, due to concern for their career and safety. As noted by ASADA:

[Our] intelligence capability will need to be able to reach in to where the knowledge is held in relation to who is doping, why and how.

...

Those most likely to know who is doping in any sport are fellow athletes. However, most athletes remain unwilling to 'blow the whistle' on drug cheats. The consequences for athletes of breaking the silence on doping can be acute. Whistleblowers can be ostracised by fellow athletes and by the governing body of their sport, can have their sporting careers ended, and can ruin their chances of a career in the sporting industry. Consequently, a fundamental contemporary challenge for anti-doping organisations is the development of a framework for obtaining information from athletes and athlete support persons on doping within sport that affords whistleblowers the protections that they require.²⁵⁰

Protection for whistleblowers will be critical in developing a more robust system of sports integrity governance, both in relation to doping and other integrity issues.²⁵¹

AAA supported the establishment of whistleblower protections – consistent with their view, which we share, that athletes should be at the centre of the fight against corruption in sport.

Incentives do exist under the Code for athletes or support personnel found guilty of committing an ADRV to provide substantial assistance in discovering or establishing other ADRVs. While we do not support the offer of financial rewards, incentives in relation to reduced penalties seem to be justified.

We consider that whistleblower reporting should be centralised, with a hotline or other similar service to be provided by the proposed NSIC as discussed later in this report.

RECOMMENDATION 23

That the Australian Sports Anti-Doping Authority's (ASADA) investigative capability be enhanced by:

- establishing, through collaboration with the sporting sector, guidelines for the conduct of anti-doping investigations which clearly define the roles and responsibilities of government agencies (including ASADA) and the sporting sector (subject to the Australian Government Investigations Standards)
- establishing strong information and intelligence-sharing links with law-enforcement and regulatory agencies, including with and through the proposed National Sports Integrity Commission (NSIC) (with consideration being given to the application of the *Privacy Act 1988* (Cth) and any need for amendment, including conferring law-enforcement status on ASADA and the NSIC)
- Strengthening ASADA's disclosure notice regime by:
 - » excluding the right to claim privilege against self-incrimination when answering a question or providing information to ASADA, while providing, where an objection or privileged is raised, appropriate protections against non-direct or derivative use in any criminal prosecution
 - » ensuring that sanctions for non-compliance with disclosure notices are appropriate
- establishing whistleblower protections.

250 Australian Sports Anti-Doping Authority, *Submission 10*.

251 The Independent Commission Report #1, 9 November 2015, commissioned by WADA, includes a recommendation about the development of a whistleblower assistance and protection program.

8. ENFORCEMENT AND SANCTION – SIMPLIFYING THE ADRV PROCESS

Athletes and support personnel are subject to the Code by way of the anti-doping policies adopted by the sporting organisation of which they are members.

When, through sample analysis or investigation, ASADA is of the view that the anti-doping policy (i.e. the Code) has been breached, the athlete or support person receives an infraction notice asserting a breach of the relevant provisions of the anti-doping policy of the sport, and notification of an appropriate sanction.

The recipient can either choose to accept the violation and sanction, or elect to have their matter heard by a tribunal (presently in Australia, either a sports-run tribunal or the Court of Arbitration for Sport).

Before the issue of the infraction notice, there is a statutory process for procedural fairness and internal review mandated through the NAD Scheme, which is done by ASADA and the ADRV. For the purposes of this Review, the process, from the detection phase through to the issue of the infraction notice, is referred to as the ADRV process. It is outlined, in detail, in Appendix B.

In our view, the current ADRV process is overly bureaucratic, inefficient and cumbersome. Australia's implementation of Code-compliant ADRV procedures is one of the most complicated of any countries in the world and, as a result, it is confusing for those subject to an ADRV allegation and to their representatives. It is also time consuming in an environment where quick and efficient outcomes are critical. According to COMPPS:

The ADRV process is generally convoluted and confusing, and difficult for athletes and other stakeholders to understand. It is too bureaucratic, involving an inordinate number of procedural steps.²⁵²

Almost all stakeholders whose views were received in the course of the Review shared the opinion that the ADRV process needs to be streamlined. However, not all shared the same vision as to how this should be effected. We accept that the process needs revision in the interests of sports generally and athletes alike.

While there are numerous options for streamlining the process, two underlying principles should be taken into account in any reform:

1. Procedural steps (and, as a result, unnecessary delay in the system) should be minimised, but the ADRV process should not be compromised in a way that incentivises or necessitates hearings. Athletes and support personnel should feel that the pre-hearing ADRV procedure is robust enough that they might comfortably accept the terms of an infraction notice without *requiring* a hearing.
2. Any amendment to the ADRV process must ensure that it remains responsive to the increasing emphasis on more complex, intelligence-based non-AAF matters.

We consider that the simplification of the ADRV process could be achieved by three key steps:

1. Amendment of the process so that an athlete or support person's response to ADRV allegations is sought no more than *once* before issue of infraction notice
2. Removal of recourse to the AAT for any aspect of the ADRV process before the hearing phase
3. Reconsideration of the involvement of the ADRV, including whether it is required at all, and whether and how ADRV personnel might be retained and redeployed.

8.1 RESPONDING TO ADRV ALLEGATIONS

As outlined in Appendix B, the current ADRV process requires 'double consideration' of a matter by the ADRV which, by its nature, also involves approaching the participant twice to respond to what are, generally, the same ADRV allegations:

1. First, the ASADA CEO writes to the athlete (or support person) giving notice of a *possible* ADRV and inviting the recipient to make a submission to the ADRV (the 'show cause notice'). There is a 10-day period for a response.
2. ASADA then prepares material for consideration by the ADRV. If the ADRV is satisfied that it is possible that an ADRV has occurred and intends to assert a violation, the ASADA CEO notifies the participant of this intention. The participant then has 10 days to make a further submission.
3. ASADA then prepares final material for the ADRV to consider whether it 'remains satisfied that there has been a possible anti-doping rule violation' by the participant. If the ADRV remains satisfied, it makes an assertion of a possible anti-doping rule violation (the 'infraction notice').

Our view is that this process is too cumbersome and time consuming. ASADA has indicated that in its estimation, it takes a minimum of eight weeks from the issue of a 'show cause' letter for a matter to pass through the ADRV process.

ASADA has suggested a streamlined approach which defers the opportunity for an athlete or support person to respond to an ADRV allegation until an infraction notice is received. Under this approach, the detection and investigation phase of the ADRV process would result in a brief of evidence being prepared by ASADA, which would then be provided directly to the CEO to consider whether a recommendation should be made to the sport regarding a sanction. If a sanction is recommended, ASADA would issue the infraction notice on behalf of the sport, which would then give the athlete the opportunity to either accept the violation and sanction or to institute the hearing process. If the latter, the opportunity to contest the notice would necessitate a hearing.

As ASADA highlighted to the Review:

In other words, the role of the notice is to assert the breach of the anti-doping policy of the relevant sport, and to offer the recipient of the notice to elect to accept the violation and sanction, or to appeal to a sport tribunal.

The streamlined proposal would make ASADA's results management process more streamlined and simpler for athletes and support persons. While some parties may argue that removing the ADRV or AAT may reduce athlete's rights, it is submitted that the athlete's best interests are best protected through earliest consideration of the substantive matter by appropriate hearing bodies.²⁵³

In part, ASADA's view is informed by its experience of the way that participants engage with the current ADRV process:

Our experience of the provisions is that participants engage with the ADRV in the following sorts of ways:

- they ignore the process entirely, and their matter proceeds through the statutory process and then sanction by their sport
- they make submissions as a prelude to having their matter dealt with at a sport tribunal hearing
- they ignore the process as a prelude to having their matter dealt with by their National Sporting Organisation; and/or
- in cases of positive tests, they accept the test result and make submissions in mitigation. These submissions are relevant to sanction, which is beyond the power of the ADRV to consider. While such submissions are taken into account by the ASADA CEO in making a sanction recommendation to a sport, the mandatory sanctions prescribed in sports anti-doping policies means that such submissions generally have limited effect.²⁵⁴

²⁵³ Australian Sports Anti-Doping Authority, *Submission 10*.

²⁵⁴ *Ibid.*

We see merit in this proposal. It would be consistent with the requirements of the Code and reflective of the ADRV process in many countries.

Nevertheless, it is our opinion that, once ASADA has formed the view that an assertion should be made in respect of an ADRV, the participant should be given one opportunity to respond to the allegations by way of a show cause notice before an infraction notice is issued, and to engage with ASADA. Our reasons are as follows.

First, ASADA's proposal would mean that an athlete or other participant would not have an opportunity to know the case against them before receiving an infraction notice, and further, would not have the opportunity to engage with the allegations and evidence presented against them by ASADA unless they elect to have their matter heard in a tribunal.

In our view, creating a system with no opportunity for engagement before the hearing phase could cause delays to the finalisation of matters.

The pre-hearing phase leading to the issue of an infraction notice should be robust enough so that participants feel comfortable in accepting the violation and sanction without automatically seeking a hearing for an opportunity to respond to the allegations.

Second, even if a participant accepts that an ADRV has occurred, the responsible authority (either ASADA or an NSO) must still seek a submission from the participant about any sanction. The Code sets out a number of circumstances that might lead to a reduced or fully suspended sanction and a participant must be afforded the opportunity to address these. Should the participant provide assistance amounting to substantial assistance within the meaning of the Code in identifying or establishing other ADRVs, then ASADA has sanctioning discretion, which can be important from a 'plea-bargaining' perspective and lead to a more cost-effective and efficient system overall.

8.2 RECOURSE TO THE ADMINISTRATIVE APPEALS TRIBUNAL

For the purposes of procedural fairness, there is no need for any aspect of the pre-hearing phase of the ADRV process to be subject to AAT review.

In our view, so long as participants have the opportunity to respond to allegations before the issue of an infraction notice – and have access to an affordable, efficient, and effective tribunal to have their matter heard should they elect – recourse to the AAT for a merits review of any aspect of the pre-hearing ADRV process is unnecessary and potentially dilatory.

8.3 THE ANTI-DOPING RULE VIOLATION PANEL

How the ADRV process is amended with respect to the ADRVP is a complex issue. The ADRVP is responsible for reviewing determinations of the ASADA CEO that there has been a possible ADRV by a participant, and considering material gathered by ASADA in support of that determination.

While this would appear to provide a check on the power of the ASADA CEO to issue infractions, stakeholders (including sports and ASADA) submitted that the ADRVP's involvement in the process was time consuming, overly complicated and duplicating procedures that would inevitably follow:

We query whether the ADRVP is duplicating the work to be done at a first-instance hearing before a tribunal; namely considering the relevant evidence and materials to determine whether an ADRV has occurred.

We recommend that the ADRVP be abolished.²⁵⁵

ASADA submitted that in the time since the ADRVP was established, it has never once 'overruled' the CEO by deciding that a matter should not proceed:

In no matter has the ADRVP made a decision that a case should not proceed on the basis that it was not possible that an anti-doping rule violation had occurred. Such a decision would be peculiar in a situation of an adverse analytical finding where a prohibited substance had been detected in an athlete's sample. This is only reinforced further given the relatively low bar set by the AAT as to what is 'possible'.²⁵⁶

²⁵⁵ Coalition of Major Professional and Participation Sports, *Submission 20*.
²⁵⁶ Australian Sports Anti-Doping Authority, *Submission 10*.

The 'possible' threshold seems to be of limited utility. As noted by COMPPS:

In our view, this process is too long and cumbersome, and the ADRVP result – an 'assertion that a possible ADRV has been committed' – is of very little assistance in the sporting tribunal, which must establish the existence of the violation to the comfortable satisfaction of the tribunal.²⁵⁷

The ADRVP Chair agreed with this proposition, indicating that:

The threshold that the Panel applies is that there is a possibility that an ADRV has occurred. In practice this has meant that the Panel hasn't ever disagreed with the CEO, as the threshold that the CEO applies is higher in the first instance.²⁵⁸

We share this view.

IS THERE A NEED FOR A CHECK AND BALANCE IN THE SYSTEM?

Some stakeholders indicated that while the ADRVP adds little more than time and complexity to the process for AAF ADRVs, given the nature of the supporting evidence in those cases, there may be some utility in retaining ADRVP oversight of non-AAF cases – particularly those that are complex and based on evidence gathered through intelligence-led investigations.

We think that there is some merit in this proposal. However, even in this limited role, the benefit of ADRVP oversight risks being outweighed by the extra administrative delay.

A preferable course might involve ASADA funding a legal officer from either the Australian Government Solicitor (AGS) or the Commonwealth Director of Public Prosecutions, to provide independent oversight and advice on the progress and finalisation of non-AAF ADRVs. This would have the dual benefit of minimising unnecessary procedural steps while maintaining an independent check and balance with respect to the final decision to issue an infraction notice.

SHOULD THE ADRVP BE RETAINED IN SOME CAPACITY?

While under the current arrangements the ADRVP does not contribute in a substantive way to the statutory ADRV-determination process, we accept that it does provide critical advisory services, albeit in excess of its mandate, which help ASADA in ensuring that case development and presentation is maintained at a high standard.

The advice of the ADRVP Chair is that the ADRVP plays an important 'feedback' role, achieved primarily through the face-to-face meetings that are held once a year with all ADRVP members in attendance, as well as ASADA and the NISU. These feedback sessions look at the issues that have been arising over the last year and, strategically, what can be expected over the forward estimates and where efforts and resources should be targeted.

Another 'ancillary' role played by the ADRVP, in the course of its review of individual matters, has been in identifying and notifying ASADA of additional areas of interest and potential inquiry, through the process of reviewing the briefs – for instance, why one possible violation was charged and not another. Also, the ADRVP occasionally brings other issues to the attention of ASADA; for example, the identification of particular vulnerabilities of certain categories of athletes; ensuring that athletes who are the centre of an ADRV are given effective counselling; and inquiring about the availability and suitability of training that has been provided to sporting teams.

We consider that these services provided by the ADRVP should be retained if possible. In one consultation it was suggested that the ADRVP members would be better utilised if employed by ASADA part time as an internal expert reference committee. We agree. If the current ADRVP role is removed, the retention of its services in an advisory capacity could be of valuable assistance.

ASADA has also suggested that the members of the ADRVP, as highly experienced and knowledgeable experts in anti-doping matters, would be ideal as arbitrators for ADRV matters in any new national sports tribunal that may be established:

²⁵⁷ Coalition of Major Professional and Participation Sports, *Submission 20*.
²⁵⁸ The Panel met with the ADRVP Chair, Professor Andrew McLachlan, on 17 August 2017.

It should be noted that ASADA's suggested proposal is in no way critical of the individuals that are appointed to the ADRVP. Each member of the ADRVP possesses unique skills that are relevant to the field of anti-doping. The members of the ADRVP are also familiar with the operation of certain aspects of the Code.

There would be efficiencies and benefits should the members of the ADRVP be invited to be members (legal or other expert members) of any new national sports integrity tribunal. Such appointments would assist to streamline the initial introduction of the tribunal and provide confidence to stakeholders with respect to the appointment of individuals who are familiar with anti-doping processes and investigations.²⁵⁹

In summary, current practice shows that the ADRVP may not be empowered to provide a great deal of practical value to the case-by-case processing of a violation – particularly regarding AAF ADRVs. However, its existence over time has meant that ASADA's practice and procedure have been set and maintained to a very high standard. We accept that retaining the expert members in an advisory capacity or as arbitrators in the national sports tribunal would be of value.

RECOMMENDATION 24

That the Anti-Doping Rule Violation (ADRV) process be streamlined but remain responsive to the increasing emphasis on non-adverse analytical finding ADRVs. That this be achieved through:

- amending the statutory process so that a response to ADRV allegations from an athlete or support person is sought no more than once before the issue of an infraction notice
- removing recourse to the Administrative Appeals Tribunal for review of any aspect of the pre-hearing ADRV process
- retaining the expertise of Anti-Doping Rule Violation Panel members in an advisory capacity or as arbitrators for the proposed National Sports Tribunal.

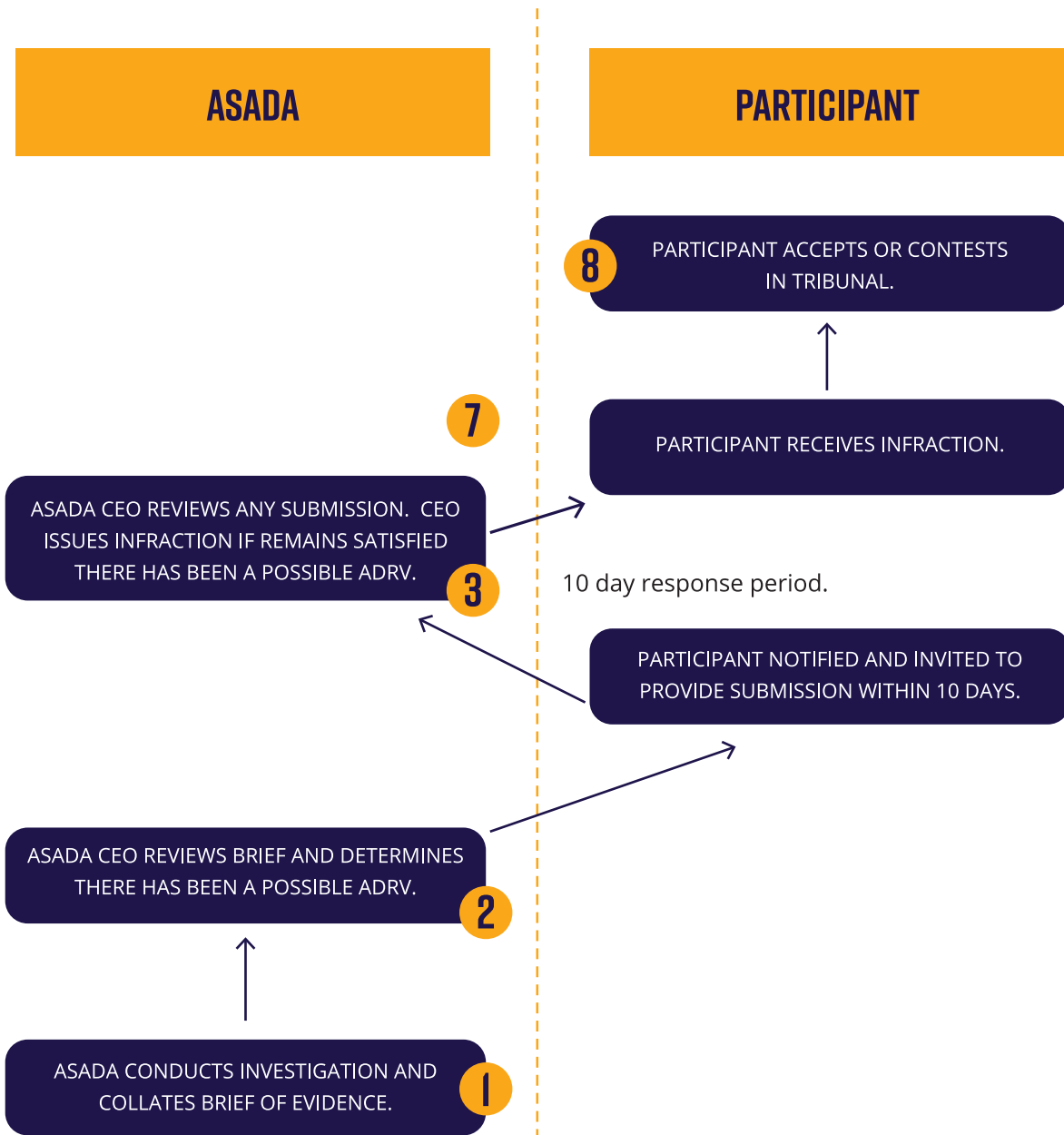
Figure 6: Anti-Doping Rule Violation Processes

CURRENT ANTI-DOPING RULE VIOLATION PROCESS



- 1 Evidence collected by ASADA can relate to a 'presence' (sample test) or a 'non-presence' violation (established through other evidence including intelligence-led investigation).
- 2 The ASADA CEO considers evidence, checking for any irregularities of process or existence of a therapeutic use exemption.
- 3 Participant has 10 days to provide a response to the allegations in the notice, by way of submission. If no response is received, the right to make a submission is waived.
- 4 The ADRVP comprises part-time appointees which meet approximately one per fortnight (this can create additional delay in the ADRV process).

PROPOSED ANTI-DOPING RULE VIOLATION PROCESS



- 5 When the ADRV makes an 'assertion', a right of review is enlivened. The Participant can request merits review from the AAT within 28 days (removed in the new process).
- 6 The hearing tribunal for an contested ADRV depends on process determined by the sport – presently, this can be through an in-house sport tribunal, or through the CAS
- 7 The ADRV is removed in the proposed process. Possible internal, independent review if required.
- 8 Note new proposed National Sport Tribunal Process.

9. THE AUSTRALIAN SPORTS DRUG MEDICAL ADVISORY COMMITTEE

The Australian Sports Drug Medical Advisory Committee (ASDMAC) operates as Australia's Therapeutic Use Exemption (TUE) Committee (a function required by the Code) and performs its functions in line with the Code and associated International Standard, the ASADA Act and the NAD Scheme.

ASDMAC gives approval for the therapeutic use of substances otherwise prohibited under the Code by athletes in line with approved international requirements. Under the ASADA Act and NAD Scheme, ASDMAC's primary function is to oversee the granting of TUEs and to review TUE decisions where required. In addition, ASDMAC may also provide advice about TUEs and ASDMAC functions to the ASADA CEO, sporting administration bodies, participants or other TUE committees.

ASDMAC can investigate matters to find out whether an athlete has complied with any conditions of a TUE, or whether an atypical finding or AAF was caused by naturally occurring levels of the substance concerned. It can also review the procedures adopted by a sporting administration body for authorising the use of a prohibited substance or a prohibited method.

Stakeholders submitted to us that ASDMAC executes its function exceptionally well, and is highly regarded internationally. We agree and do not see any need to modify any aspect of the functions, roles or responsibilities of ASDMAC under the ASADA Act and NAD Scheme.

However, during the consultation process, stakeholders emphasised that due to the expertise and medical knowledge possessed by the ASDMAC members and Chair, they are sometimes asked

by ASADA to give advice and services in excess of their statutory mandate. It was submitted that on occasion, this has resulted in ASDMAC members being potentially placed in a difficult position, at times giving rise to a conflict of interest, where advice has been requested by ASADA and a party to a potential dispute.

It is critical that ASADA continues to have appropriate level of medical knowledge and expertise available to it. However, this should be located in house, preserving ASDMAC's independence, and ensuring that ASDMAC can focus on executing its core functions.

RECOMMENDATION 25

That, in recognition of the extra services that the Australian Sports Drug Medical Advisory Committee (ASDMAC) provides to the Anti-Doping Rule Violation process and the appropriateness (or otherwise) of these services being provided by the ASDMAC, the Australian Sports Anti-Doping Authority consider, as an alternative, strategies for incorporating more medical expertise within its workforce.

CHAPTER 4

THE CAPABILITY OF THE AUSTRALIAN SPORTS ANTI-DOPING AUTHORITY AND AUSTRALIA'S SPORT SECTOR TO ADDRESS CONTEMPORARY DOPING THREATS

CHAPTER

5

A NATIONAL SPORTS TRIBUNAL

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I. INTRODUCTION

In the preceding chapter we examined the operation of the Australian anti-doping framework in the pre-hearing phase.

In this chapter, we consider its operation in the context of the hearing, which currently would occur in an internal sports dispute resolution tribunal or CAS, and consider how that might be replaced or supplemented by the establishment of a proposed National Sports Tribunal (NST), in line with our terms of reference.

Recognising that there are a large number of potential sports disputes that do not involve ADRVs, and which currently might be resolved through a CAS or sport-run tribunal process, we have also considered the potential benefits of vesting jurisdiction in the proposed NST to deal with non-ADRv dispute matters on a voluntary ('opt-in') basis.

2. KEY FINDINGS AND RECOMMENDATIONS

KEY FINDINGS

1. The current dispute resolution arrangements for the arbitration of Anti-Doping Rule Violation (ADRV) matters and other disputes differ across the sporting sector.
2. While the professional sports provide internal sport-run tribunals free of charge or at low cost to athletes and support people, those from smaller sports only have first-instance recourse to the international Court of Arbitration for Sport (CAS) Ordinary Division, generally at their own cost.
3. Anti-Doping Rule Violation (ADRV) matters are different from other sports disputes. The Code requires a principled process to be adhered to in all cases. Recognising that the context and vagaries of sporting codes can differ, there may be discernible benefit in sporting organisations retaining responsibility, should they wish, over how non-ADRV disputes are managed.
4. Most major professional sports have in recent years invested in developing internal integrity arrangements, including establishing internal arbitration panels for dealing with disputes. However, there is concern among stakeholders that sports adjudicating their own matters may give rise to bias, whether real or perceived.
5. The inability of sport-run tribunals or Court of Arbitration for Sport to compel *third-party* witnesses (witnesses beyond contracts with the relevant sports) to give evidence or provide documents or things for the purposes of arbitration represents a significant weakness in integrity response, which is likely to worsen with an increase in non-analytical Anti-Doping Rule Violations.
6. Notwithstanding the ongoing availability of recourse to the Court of Arbitration for Sport Ordinary Division and internal sports tribunals, there is merit in establishing a separate National Sports Tribunal that can offer a timely, transparent, cost-effective and consistent resolution process to athletes, support personnel and sports.

RECOMMENDATIONS

1. That the Australian Government establish an independent arbitral tribunal for sports matters – the National Sports Tribunal.
2. That the National Sports Tribunal be established by statute, exercising powers of private arbitration underpinned by legislation.
3. That the National Sports Tribunal have available appropriate powers to facilitate the effective resolution of cases, including the power to order a witness to appear before it to give evidence, and/or to produce documents or things; and the power to inform itself independent of submissions by the parties.
4. That the National Sports Tribunal be an independent statutory authority accountable to the Australian Government, and not be subject to ministerial direction except under limited circumstances.
5. To improve current national sports dispute resolution arrangements, the National Sports Tribunal (NST) must:
 - be cost effective for both sports and participants, with funding provided in part by government and in part on a user-pays basis (on a sliding scale based on financial capacity)
 - be efficient, including with regard to clear, consistently applied and flexible practice and procedure
 - be transparent – publishing decisions by default, with discretion to withhold confidential material or sensitive decisions by the NST on application by the parties
 - have pre-eminent arbitrators available on a closed list, with appointment to the list by application and selection processes conducted by the proposed National Sports Integrity Commission, in consultation with the Minister for Sport.

STRUCTURE OF THE NATIONAL SPORTS TRIBUNAL

6. That the National Sports Tribunal (NST) have two first-instance divisions – the Anti-Doping Division, and the General Division, and that the NST also offer an Appeals Division for both the Anti-Doping Division and the General Division. That a further avenue of appeal to CAS Appeals Arbitration Division be available in all instances where this is a requirement for maintaining compliance with the Code.

THE NATIONAL SPORTS TRIBUNAL ANTI-DOPING DIVISION

7. That the National Sports Tribunal be the default dispute resolution body responsible for arbitrating anti-doping matters other than in circumstances where a sporting organisation has approval from the National Sports Integrity Commission for in-house dispute resolution arrangements (conditional 'opt-out' jurisdiction).
8. That, in recognition of the extra powers available to the National Sports Tribunal (NST) to order witnesses to appear before it to give evidence, and/or to produce documents or things; an athlete or support person subject to an Anti-Doping Rule Violation assertion, who participates in a sport which has an National Sports Integrity Commission-approved internal dispute resolution tribunal, be entitled to seek leave from that tribunal to have their matter heard in the NST where justice requires. A similar provision should apply to the Australian Sports Anti-Doping Authority or the Sports Controlling Body where that is necessary for a fair and just outcome.
9. That in circumstances where the National Sports Tribunal (NST) is the hearing body for first-instance Anti-Doping Rule Violation matters, appeals be heard at the option of the aggrieved party by the NST Appeals Division, or the Court of Arbitration for Sport Appeals Arbitration Division (as appropriate, and subject to the rules of the sport).
10. That engagement with the conditional opt-out system for Anti-Doping Rule Violation arbitration be a requirement of achieving and maintaining sports controlling body status (required for Australian Sports Commission funding and to participate in the Australian Sports Wagering Scheme).

THE NATIONAL SPORTS TRIBUNAL GENERAL DIVISION

11. That the National Sports Tribunal (NST) also exercise jurisdiction to resolve other sport disputes, in so far as athletes and support personnel, and sporting organisations, have elected through contractual arrangements to have disputes of particular types resolved by the proposed NST (the 'opt-in' jurisdiction of the NST) in its General and Appeals Divisions as may be required.
12. For general disputes, that the National Sports Tribunal (NST) be established in such way that it can provide arbitration, mediation and conciliation services, depending on the needs of the sporting organisation and, where appropriate, the right of appeal to the proposed NST Appeals Division.

3. ARBITRATION OF SPORTS DISPUTES IN AUSTRALIA

Many types of disputes can arise in a sporting context. What we focus on here, generally, are disputes arising under the rules of a sport.

When a participant breaks a rule of a sport (including an anti-doping rule), they may find themselves disqualified from an event or required to serve a period of suspension. Off-field behaviour may also give rise to a disciplinary issue resulting in a dispute between a player and their sporting organisation about how it should be resolved. Conflict might also arise if a participant (especially in medal sports) disputes their non-selection in a team or event.

While the content of a sporting dispute will usually arise under contract (in that participants agree to relevant rules and policies when they become a member of, or enter into a contract with, a sporting organisation), we are not concerned, here, with commercial contractual disputes. Nor do we include as 'sporting disputes' other legal actions primarily founded in tort or public law which are determined in the courts of law.

Rather, for current purposes, 'sporting dispute' refers to matters occurring under the rules or policies of a sport that may result in a sanction or other adverse outcome imposed by the sporting organisation on an athlete or support person, including off-field player behaviour, salary cap breaches, player eligibility and selection, competition manipulation, ADRVs and so on.

3.1 INCIDENCE OF SPORTING DISPUTES

The sporting environment has become commercialised, leading to a growing incidence of sporting disputes. There can be a lot at stake – the sports industry is estimated to account for between 3% and 6% of total world trade,²⁶⁰ and salaries of professional athletes continue to grow commensurate with the increasing product value and the social and cultural importance of high-profile sport.

The system is also highly complex, involving both international and domestic regulatory regimes, and policies and rules governed by national sporting organisations and their affiliated international counterparts.

Given the complexity in the sporting landscape, it is not surprising that private arbitration – dispute resolution governed by and administered through the rules of the sport – is 'now firmly established as the dispute resolution method of choice throughout the sports industry'.²⁶¹ This is evidenced in part by the growing caseload for CAS, which in 2016 received 100 cases in its Ordinary Division, 458 appeals to its Appeals Arbitration Division and issued 599 award resolutions, some from previous years' filings, for various sport-related issues, across all sports.

3.2 ANTI-DOPING RULE VIOLATIONS

The Code requires the anti-doping organisation managing the ADRV process to provide any person asserted to have committed an ADRV with:

'a fair hearing within a reasonable time by a fair and impartial hearing panel. A timely reasoned decision specifically including an explanation of the reason(s) for any period of ineligibility shall be publicly disclosed as provided for in Article 14.3'.²⁶²

Additionally, the Code requires that for international-level athletes, anti-doping decisions may be appealed exclusively to the CAS Appeals Arbitration Division²⁶³ (without first being appealed through any other dispute resolution mechanism) but it does not require the CAS to be used in the first instance; and aside from the requirement that a hearing be fair, impartial and held within a reasonable time, the Code is not prescriptive with respect to the formation of a first-instance hearing body or the conduct of hearings.

260 Blackshaw, I, *TV Rights and Sport*, TMC, Asser Press (2009); José Luis Arnaut, *Independent European Sports Review 2006*; Presentation of the United Nations Environment Programme (UNEP), November 2004.

261 McAuliffem, W, and Rigozzi, A, 'Sports Arbitration', 2012 *The European & Middle Eastern Arbitration Review*, 23 November 2011, <http://globalarbitrationreview.com/insight/the-european-middle-eastern-arbitration-review-2012/1036693/sports-arbitration%20-%20ftn_1#ftn_1>.

262 *World Anti-Doping Code*, World Anti-Doping Agency (effective as of 1 January 2015) a. 8.1.

263 Op. cit. a. 13.2.1.

Internationally, this has led to the development of varied arrangements for managing the ADRV process and the conduct of hearings.

In Australia, responsibility for determining arrangements for the conduct of hearings for ADRVs falling within the jurisdiction of ASADA sits with the relevant NSO, with many delegating responsibility to the CAS Ordinary Division through agreement with ASADA. Appeals from decisions of the CAS Ordinary Division are heard by the CAS Appeals Arbitration Division, in Lausanne, Switzerland.

Generally, international-level athletes and those competing in international events in Australia will fall under the anti-doping jurisdiction of the relevant ISO and/or major event organiser, unless the testing of those athletes is done at the initiative of ASADA, in which case ASADA will maintain responsibility for results management.

3.3 OTHER SPORTING DISPUTES

The range of sporting disputes that can arise is diverse and likely to be spread over a wide range of seriousness. Some may have profound consequences for an athlete or support person and for their sport or club such that a method of securing a prompt, fair and informed resolution is required. Similarly to ADRV disputes, this will normally be dealt with in the rules of the club or sports controlling body but will not otherwise be subject to a form of statutory regulation similar to the ASADA Act. In some instances, such disputes are currently determined either by sports-run internal tribunals, or referred to the CAS Ordinary Division.

3.4 AUSTRALIAN SPORT DISPUTE TRIBUNALS

Australian Government policy requires that for an NSO to have its anti-doping policy approved by ASADA, the policy must specify either CAS or an ASADA-recognised sport-run hearing body as a first-instance tribunal. Many have adopted the standard clause recommended by ASADA in the Sports Administration Body Anti-Doping Policy Template, which nominates CAS as the first-instance hearing body.

8.4 ESTABLISHMENT OF HEARINGS

8.4.1 The Article 8 hearing body for the purpose of this Anti-Doping Policy at first instance is CAS or a hearing body recognised or approved in writing by ASADA on a case-by-case basis. Any appeal from a first instance decision will be heard by CAS.

8.4.2 Should a Person elect to have a hearing in accordance with Article 8 or Article 7.9.3, the Person will be responsible for filing their application for a hearing with CAS, and paying any applicable CAS fees.

This model policy anticipates that sports might seek approval to establish ad hoc hearing bodies on a case-by-case basis; ASADA has indicated that this rarely occurs, if at all.

At present, in Australia all athletes have a right to appeal first-instance ADRV decisions to the CAS Appeals Arbitration Division, whether the decision under appeal is made by an in-house sport-run tribunal or the CAS Ordinary Arbitration Division (first instance). WADA also has appeal rights.

Six Australian NSOs (COMPPS members AFL, CA, FFA, NRL, Rugby Australia and TA²⁶⁴) have approval from ASADA to operate their own internal tribunal system for first-instance ADRV hearings. The COMPPS sports also have internal systems for the determination of other sporting disputes, although the mechanisms and procedures differ between sports.

See Appendix B for information on sport-run tribunals.

264 Some sports have also established internal appeal bodies as an intervening step between the first-instance hearing and the CAS Arbitration Appeal Division.

4. CURRENT SPORTS ARBITRATION ARRANGEMENTS

All sports in Australia currently resolve sport disputes (including ADRV matters) by private arbitration, whether through an in-house tribunal or CAS.

Stakeholders suggested there are a number of inherent weaknesses associated with private arbitration. ASADA submitted:

There are several features of private arbitration [conducted through private entities] which are arguably inconsistent with public expectations as to how anti-doping cases should be dealt with. These include:

- The absence of procedural powers that both courts and statutory tribunals have, such as the ability to require parties to cooperate with the court or tribunal and the ability to compel witnesses to appear
- The absence of privileges and immunities – for example, there is no privilege against defamation proceedings for sport tribunals or their participants (witnesses, tribunal members)
- Most sports arbitration awards are not published (unless all the parties agree) ...
- The perceived lack of independence of anti-doping tribunals operated by sports.²⁶⁵

We note these concerns but believe that sporting disputes are best dealt with through arbitration, although supported in appropriate cases by alternative dispute resolution.

4.1 PROCEDURAL POWERS

Sport-run tribunals and CAS, being private bodies engaging in private arbitration, have limited powers for gathering information and evidence at the hearing phase of a sport dispute.

In the investigation phase of an ADRV matter, ASADA is able to issue disclosure notices to *any person* requiring that they produce documents or things, or disclose information, or attend an interview to answer questions.²⁶⁶

However, similar powers are not vested in the sports tribunals or CAS – their reach and powers depend on the contractual arrangements associated with the relevant sport. In an ADRV matter, it is the contract between the athlete and the sport which sets out which particular tribunal will hear the case. The sport will commonly have contractual arrangements with athletes and support persons including medical personnel, coaches and the like, which will require the relevant party to cooperate with investigations and provide evidence, including witness testimony when required.

However, such agreements cannot extend to third parties (hereafter referred to as third-party witnesses) who may have knowledge of important exculpatory or inculpatory evidence associated with the alleged ADRV, including for instance, suppliers of performance-enhancing substances. The cooperation of such third parties in ADRV matters heard in CAS or in-house sport tribunals is a matter of goodwill – to the extent that an individual is reluctant to participate in a hearing, the ability of a party to effectively present their case can be weakened.

The participation of parties under contractual arrangements with sporting organisations is not guaranteed – they participate, essentially, to avoid any adverse action that a sporting organisation may take under the terms of the relevant contract. To the extent that a party is willing to breach their contract with the sporting organisation and suffer any penalty that ensues, they may refuse to cooperate in the course of a tribunal matter or CAS hearing.

Stakeholders expressed a range of views as to the practical impact of a lack of power to compel witnesses to give evidence. ASADA submitted that there had been a number of instances in the past where ADRV hearings had been frustrated by an inability to compel third-party witnesses to appear,²⁶⁷ and indicated that the current absence

265 Australian Sports Anti-Doping Authority, *Submission 10*.

266 Australian Sports Anti-Doping Authority Act 2006 (Cth) s. 13.

267 Australian Sports Anti-Doping Authority, *Submission 10*.

of such powers would be inconsistent with public expectations as to how ADRV matters should be run.

Other stakeholders were more equivocal. UKAD noted the lack of similar procedural powers in the UK system has had little practical impact on matters thus far.²⁶⁸

To some degree, ASADA's central role in identifying and (in most cases) prosecuting ADRVs in CAS and sports-run tribunals means that, at least in the investigation phase of the ADRV process, coercive powers are able to be exercised in respect of third-party witnesses to ensure that evidence is collected and potentially available for the use in an ADRV hearing.

However, a tribunal may be unable to place much weight on the evidence of someone who has provided information to ASADA but declines to appear at a hearing, leaving ASADA at a potential disadvantage. Conversely, if weight is placed on that evidence, without an opportunity for cross-examination, the athlete may suffer a procedural unfairness.

Similarly, if a person alleged to have committed an ADRV has no avenue through which to compel exculpatory evidence from a reluctant witness, this can create a situation of disadvantage to that person.

While stakeholders expressed a range of views regarding the historical effect of this lack of procedural power, almost all agreed that with the increasing sophistication of doping, and growing reliance on non-AAF ADRVs established through intelligence-led investigations, it will become essential that parties to ADRV matters have the ability to effectively present and test evidence from relevant witnesses.

In our view, the inability of sport-run tribunals or CAS to compel third-party witnesses to give evidence, or provide documents or things for the purposes of arbitration, represents a weakness in the current ADRV process which can disadvantage one party or the other. This is potentially important at a time when cases are likely to become more reliant on intelligence-based evidence which will need to be supported by witnesses.

While not raised with us throughout the consultation phase, we note that there may be some facility for a party to an ADRV matter to approach the superior court of the jurisdiction in which the ADRV matter is to be determined and request that a subpoena be issued under the provisions of the relevant state or territory commercial arbitration act.²⁶⁹ It does not appear that this has been tested previously in any sports dispute; however, this is a power that we would expect to be the subject of express provision in any legislation establishing the proposed NST.

4.2 TRANSPARENCY

It is in the nature of arbitration that previous decisions will not deliver binding precedent with respect to future matters. However, the basis on which previous matters have been decided should be instructive, providing guidance and assisting in maintaining consistency and certainty before the resolution of similar matters. In our view, transparency in decision-making is critical in circumstances where there are currently seven separate arbitral bodies (including sports' in-house dispute resolution tribunals) conducting first-instance hearings.

ASADA has indicated that CAS arbitral awards present a problem in this respect:

A difficulty that ASADA has with the existing first instance (original jurisdiction) CAS decision structure is that the CAS Code of Sports-related Arbitration states that Proceedings and Awards are confidential (unless all parties agree or the Division President so decides)²⁷⁰. There have been multiple CAS first instance decisions that would greatly add to anti-doping jurisprudence that ASADA has not been able to make public. Our experience is that athletes very rarely agree to make public a decision in relation to their doping matter.²⁷¹

The practice in the six COMPPS tribunals varies. While the AFL rules require publication of the disposition of any determination of an ADRV, it is not clear whether the reasons for the decision are routinely made available.

268 The Panel consulted with UKAD via teleconference on 4 September 2017.

269 Each state and territory in Australia has a commercial arbitration act, identical or highly similar to the model commercial arbitration act agreed by Attorneys-General in 2010.

270 *Code of Sports-related Arbitration* (in force as from 1 January 2017), rule 43.

271 Australian Sports Anti-Doping Authority, *Submission 10*.

ASADA indicated that in its experience, athletes and their advocates who are unable to compare their circumstances with previously decided matters will sometimes elect to have their matter heard as a 'failsafe' measure to ensure a fair outcome, as they are not able to judge whether a sanction sought or imposed by a sport is reasonable.²⁷² This can lead to unnecessary proceedings with consequent costs and delays.

We share ASADA's concerns in this respect.

In circumstances where there are seven separate and independent tribunals determining ADRV matters in the first instance, transparency in decision-making is important to avoid inconsistency in outcomes. We recognise that WADA has a role to play in ensuring consistent ADRV outcomes, and that will normally depend on the institution of an appeal, although WADA may also intervene when the NADO fails to render a timely decision.²⁷³

Australian Athletes' Alliance (AAA) submitted that ideally, a tribunal would '[publish] its decisions and reasons in a de-identified manner for purposes of transparency and protects the identity of athletes to the full extent possible.'²⁷⁴

We agree.

4.3 COSTS

COMPPS submitted that dispute resolution arrangements established by member sports operate at either low or no cost to participants:

The tribunals established by the Sports provide very affordable justice. The tribunal members appointed by the Sports either provide their services pro bono or at greatly reduced daily rates, generally nominal amounts compared with their daily charge-out rates. Persons who are charged with offences are not charged fees except by one sport that charges a \$500 application fee for commencing a matter before its disciplinary tribunal and \$2,000 for an appellant seeking to appeal to its Appeal Committee and another sport seeks a fee

of \$250 for some appeals and disputes. Two sports seek a surety from applicants to guard against frivolous or vexatious disputes. There is no provision for costs to be awarded against an applicant except for one sport that provides discretion for its disciplinary committee and appeals tribunal to award costs against a party for frivolous or vexatious prosecution or defence of a disciplinary dispute.²⁷⁵

While this is a positive for the COMPPS sports, participants in other sports which turn to the first-instance jurisdiction of the CAS find themselves in a different position. As noted by ASADA:

Generally, CAS requires an athlete to file a 1000 CHF [Swiss francs] [about AU\$1,300] filing fee when lodging an arbitration application.

...

The CAS estimates 'advanced costs'. This requires all parties to contribute arbitration fees in advance of the proceedings. The complexity of the matter can impact the advance costs estimate. Generally, an advance costs estimate for first instance matters would be approximately 6000 CHF [about AU\$7,800] (3000 CHF to be contributed by ASADA and the NSO and 3000 CHF for the athlete). Depending on the conduct and costs of the arbitration further costs may be requested by CAS. These costs do not include the legal costs of the parties in conducting the arbitration.²⁷⁶

There are some avenues for relief in the case of impecunious athletes and support personnel who wish to opt for a hearing. ASADA noted that:

The CAS has a legal aid system whereby athletes can apply to gain assistance, where they are without sufficient financial means, to defend their rights before the CAS.²⁷⁷ The CAS rules for Legal Aid contain provisions that any application is confidential and decided by the ICAS Board. The rules also contain guidance on the role of Pro Bono Counsel.²⁷⁸

272 Ibid.

273 *World Anti-Doping Code*, World Anti-Doping Agency (effective as of 1 January 2015) a. 13.3.

274 Australian Athletes' Alliance, *Submission 25*.

275 Coalition of Major Professional and Participation Sports, *Submission 20*.

276 Australian Sports Anti-Doping Authority, *Submission 10*.

277 Court of Arbitration for Sport, 'Legal Aid guidelines', 1 September 2013, <<http://www.tas-cas.org/en/arbitration/legal-aid.html>>.

278 Australian Sports Anti-Doping Authority, *Submission 10*.

Article 5 of the CAS Legal Aid Rules 2016 sets out basic threshold requirements for the grant of legal aid:

ART. 5

Legal aid is granted, based on a reasoned request and accompanied by supporting documents, to any natural person provided that her/his income and assets are not sufficient to allow her/him to cover the costs of proceedings, without drawing on that part of her/his assets necessary to support her/him and her/his family.

Legal aid will be refused if it is obvious that the applicant's claim or grounds of defence have no legal basis. Furthermore, legal aid will be refused if it is obvious that the claim or grounds of defence are frivolous or vexatious.

The need to provide a reasoned request and supporting documents sufficient to establish that financial assistance is required and that there is a reasonable defence to the allegations in the infraction notice requires:

- time in circumstances where the time to respond to an infraction is limited
- possible resort to legal assistance (and funding to retain legal assistance) to support a case for aid.

Applications for legal aid and their disposition are, appropriately, confidential and as such there is little detail available on how these threshold factors operate in practice. However, in ASADA's experience in relation to appeals:

There have been several instances where athletes have informed ASADA that they would like to appeal their sanctions but simply cannot afford the CAS process.²⁷⁹

As proposed, the NST would offer a low-cost jurisdiction, first instance and appeal, lessening the burden for participants in those sports that do not have their own tribunal.

AAA also identified a concern about the impact of advocacy costs in the CAS:

We also have concerns regarding the cost of athlete advocacy in relation to anti-doping matters. This is primarily due to the complex systems which are in place, requiring athletes to seek significant and costly legal assistance.²⁸⁰

4.4 TIME FOR FINAL RESOLUTION

Sporting disputes, particularly those connected with ADRVs, require a timely resolution. They will often determine whether and when an athlete can return to the field before an event or competition begins, affecting earnings, team capabilities and reputation.

Some concerns were raised with us regarding delays in the finalisation of matters commenced in the CAS Oceania registry. Stakeholders – predominantly ASADA – posited that delays in finalising matters were associated with the time taken in securing the approval of decisions through the central CAS registry in Lausanne. ASADA observed:

In our experience CAS arbitrators are very good at dealing with procedural matters and setting timetables for resolving disputes. However, ASADA has increasingly experienced lengthy delays in obtaining first instance decisions from the CAS. ASADA is not aware of the reasons for delays but this may in part be because arbitral awards may be sent to Switzerland for approval before being handed down to the parties.²⁸¹

ASADA provided the following by way of example of typical delays experienced in more recent years:

The athlete filed an application to the CAS on 5 July 2016, challenging whether an anti-doping rule violation had been committed and what sanction should apply. A hearing was held on 7 November 2016 (with additional submissions filed by the parties on 9 November 2016). A decision was not handed down by the CAS until 25 May 2017 (almost 7 months later).²⁸²

279 Australian Sports Anti-Doping Authority, *Submission 10*.

280 Australian Athletes' Alliance, *Submission 25*.

281 Australian Sports Anti-Doping Authority, *Submission 10*.

282 Ibid.

We heard little criticism of delays in the in-house tribunals conducted by the COMPPS sports either in dealing with ADRV cases or other disputes. COMPPS notes that in its view:

Sports have established effective and efficient processes and protocols to support their disciplinary activities. ... Generally, they are “well-oiled” and ready to go at very short notice. They have been tested often and refinements have been adopted to make the systems stronger.

...

The role of the Sports in implementing their own integrity tribunals also encompasses the case management and procedural aspects of running a disciplinary system. This is particularly critical from the perspective of managing the timing of disciplinary procedures, not only to ensure their timely conduct but also to take account of key events in a sport’s calendar.²⁸³

Most sports, however, do not have internal tribunals or the kind of integrity investment expertise possessed by the COMPPS sports.

4.5 INDEPENDENCE

Although COMPPS sports have in recent years invested in developing internal integrity arrangements for dealing with ADRVs and other disputes, including some sports establishing an in-house appellate structure, some stakeholders expressed concern that sports adjudication of their own matters can give rise to bias, either actual or perceived.

COMPPS submitted that no such issue arises, due to the calibre and reputation of tribunal members appointed:

The Sports have seen comments ... to the effect that there is concern about the perception of a potential conflict of interest of tribunal members because they have been appointed by the Sports. The Sports take exception to those comments. The tribunal members are independent. They value their independence. The Sports value and protect the independence of the tribunal members.

We are not aware of any instance where a tribunal member has been pressured or influenced by a sport to make a decision in a particular way. The calibre and reputations of the people appointed to tribunals is such that any such attempt would be rebuffed and reported.

We ask the Review Panel to apply this test – take a random selection of the tribunal members appointed by the Sports and ask them whether they have any difficulty in being independent when deciding sporting matters? Ask them further whether they have ever been pressured by the sport that has appointed them to make a decision in favour of that sport? Ask them what their reaction would be if they were asked by the sport to make a decision that was biased or in some way not based on the available evidence and the relevant legal principles?²⁸⁴

No incidents of actual bias or conflict of interest have been brought to our attention in relation to the resolution of disputes by the COMPPS sports in-house tribunals. However, it is important that tribunals resolving ADRV matters must not only be impartial and independent, but be seen to be so by participants, the general sporting community and the public. Existence of an independent statutory NST would address such concerns.

283 Coalition of Major Professional and Participation Sports, *Submission 20*.
284 *Ibid.*

5. ESTABLISHING A NATIONAL SPORTS TRIBUNAL

Athletes and others who are alleged to have committed an ADRV or some other integrity breach must have access to a fair and independent hearing body that is able to exercise appropriate powers in a hearing that is cost effective and efficient.

Arbitration remains in our view the preferable means of resolving ADRV disputes. Such a preference is enshrined in the Code. We also see arbitration as the primary avenue for resolution of other disputes, supplemented by alternative approaches such as mediation and conciliation, where the nature of the dispute makes it appropriate.

COMPPS submitted that the disciplinary tribunals established by six member NSOs should be retained as is, because each is highly adapted to the specific sport that it serves and provides a high-quality, independent service to the sport 'through effective and efficient processes and protocols to support their disciplinary activities'.²⁸⁵

We accept the COMPPS submission in relation to ADRV matters where the sport has an in-house tribunal, subject to it being approved as such by the proposed NSIC. This is referred to as the 'opt-out' jurisdiction later in this chapter. We also accept that the sports with internal tribunals should have the right to retain their jurisdiction in relation to other sporting disputes, but with the right to opt for their resolution to be referred to the proposed NST. This is referred to as the 'opt-in' jurisdiction which is similarly outlined in more detail later in this chapter.

In our view, ADRV matters warrant a timely and expert resolution because of:

- the complexity of many contemporary ADRV cases, which rely on evidence obtained through intelligence-led investigations

- the involvement of the Australian Government (via ASADA) in investigating and establishing ADRVs
- the public health implications associated with the use of prohibited substances and/or methods
- the severity of potential sanctions and reputational damage to athletes and clubs.

For these reasons, we consider it appropriate, where a sport does not have an internal tribunal, that a jurisdiction to deal with these cases be also vested in the proposed NST (including a jurisdiction to hear appeals of NST first-instance outcomes), while also preserving access to the CAS Appeals Arbitration Division, where that is available in accordance with the Code. We believe that this would enhance the credibility of sport in Australia and, where exercised, deliver a cost-effective resolution procedure.

RECOMMENDATION 26

That the Australian Government establish an independent arbitral tribunal for sports matters – the National Sports Tribunal

6. INTERNATIONAL MODELS FOR ADRV HEARINGS

In considering the form and jurisdiction of the proposed NST, we looked at relevant models in other countries, in particular those in New Zealand and the United Kingdom.

There is a high degree of variation in the arrangements for ADRV hearing mechanisms and resolution of other sport disputes in different countries. In a broad sense, the models include:

- establishing an ADRV in-house panel of independent experts *within or associated with* the NADO or national sports administration body (e.g. Japan)
- government-funded private arbitration (opt in) with jurisdiction over ADRVs and general sport disputes (e.g. United Kingdom)
- statutory tribunal exercising powers of private arbitration (opt in) with jurisdiction over ADRVs and general sport disputes (e.g. New Zealand)
- statutory body exercising private arbitration (compulsory jurisdiction) with jurisdiction over ADRV matters and general sport disputes (e.g. Canada).

6.1 NEW ZEALAND

The model adopted by New Zealand in establishing the Sports Tribunal of New Zealand (STNZ) provides an instructive example of an entity able to resolve both ADRV and other sport disputes, being:

- an independent public authority
- established under statute with the powers and immunities that this provides
- able to exercise powers of private arbitration in applying the rules of the relevant sport to resolve disputes.

With regard to the conduct of matters, the STNZ:

'... has wide powers to inspect and examine documents, and can require witnesses to attend hearings and produce documents or other material for examination. the tribunal will hear evidence that it considers appropriate and may take evidence under oath or affirmation. the proceedings are a form of inquiry, and the tribunal may conduct its own research to gather additional information and evidence.'²⁸⁶

In relation to the New Zealand model, ASADA noted:

The *Sports Anti-Doping Act 2006* (NZ) (SADA Act) establishes the Sports Tribunal of New Zealand, with powers to summon witnesses, and the privileges and immunities that statutory tribunals generally have. The Tribunal obtains jurisdiction to deal with sports disputes (including anti-doping matters) through the agreement by all the parties to refer the dispute.²⁸⁷

Under section 16 of the SADA Act, the Board of Drug Free Sport New Zealand is required to make rules implementing the World Anti-Doping Code. These rules include both the referral of disputes to the Sports Tribunal of New Zealand and the appeal of Tribunal decisions to the Court of Arbitration of Sport.²⁸⁸

These rules are then adopted by sports in New Zealand; as a condition of recognition, sports are required to comply with the Code and recognise the jurisdiction of the Tribunal, or have an acceptable alternative policy for addressing disputes.²⁸⁹

The rules that are determined by Drug Free Sport New Zealand require an appeal pathway from the NZ Sport Tribunal to CAS for all athletes, not only for international level athletes.²⁹⁰

286 Sports Tribunal of New Zealand, 'Information Guide 2016', <<http://www.sportstribunal.org.nz/assets/Sports-Tribunal-Information-Guide-2016.pdf>>.

287 *Sports Anti-Doping Act 2006* (NZ), s 38(b).

288 Drug Free Sport New Zealand, 'Sports Anti-Doping Rules 2017', 21 November 2016.

289 Sport New Zealand, 'Eligibility Criteria', <www.sportnz.org.nz/about-us/who-we-are/how-we-invest/investment-framework/#disputes>, accessed 15 December 2017.

290 Australian Sports Anti-Doping Authority, *Submission 10*.

The STNZ publishes all decisions by default (unless the tribunal decides that there are matters that should be kept confidential between the parties), and offers a low-cost approach to arbitration, with parties generally bearing only their costs of representation.

We understand that the STNZ model operates through an 'opt-in' system of private arbitration and it has not (as yet) been recognised by only one professional code in New Zealand (NZ Rugby), which has instead retained its own in-house functions for ADRVs (and other disputes).

The 2015 review of the STNZ conducted by Mr Don Mackinnon²⁹¹ indicated that costs have been a cause of concern – particularly costs for representation – although we understand the costs of providing the arbitration itself are minimal. The review also identified a growing case load of non-ADRV matters coming before the STNZ, predominantly comprising selection matters.

The review made a number of recommendations to address this growing case load:

- establish a sports mediation service.
- explore the possibility of 'resolution facilitation' (as used in Canada) for anti-doping cases before the Tribunal.
- explore ways to reduce hearing time and costs for proceedings before the Tribunal including:
 - » making a decision on the papers
 - » use of video conferencing instead of hearings in person
 - » providing neutral evaluation (a non-binding opinion at pre-trial conferences).
- provide better educational opportunities for Tribunal members, lawyers practicing in the area of sports law, as well as the sports sector generally.

These recommendations are worthy of consideration when the remit and powers of the proposed NST are defined.

6.2 UNITED KINGDOM

The UK has also established a national sports tribunal to deal with ADRV matters – the National Anti-Doping Panel within Sport Resolutions United Kingdom (SRUK). A key difference between the UK and NZ models is that rather than establishing an agency of state through statute, the UK has instead funded a private non-profit sports arbitration organisation to facilitate its ADRV-hearing panel.

In relation to the UK's ADRV arbitration model, ASADA noted.²⁹²

Unlike New Zealand ... the national tribunal is not underpinned by legislation. This means that it has the issues that CAS and the sport-specific tribunals have in Australia – for example, there are no protections for witnesses from defamation and the inability to compel witnesses.

The National Anti-Doping Panel (NADP) is a private entity, with first instance and appellate tiers. The services of the NADP are provided by Sport Resolutions (UK) (the trading name of Sports Dispute Resolution Panel Limited) provided under contract with the UK Department of Culture, Media and Sport.²⁹³

As with New Zealand, UK Anti-Doping publishes a single set of rules that are adopted by (most) national sporting bodies.²⁹⁴ It is the adoption of those rules by sports (and acceptance of the rules by members) that confers jurisdiction on the NADP.

The standard anti-doping policy distinguishes between national level and international level athletes. For international level athletes, they have an appeal right from the first instance NADP to CAS, consistent with the Code.

National level athletes have an appeal right within the NADP only. For a sport that has adopted the UKAD rules, NADP appeal decisions can only be appealed to CAS by the relevant IF or WADA, or the IOC or IPC (where the outcome would have an effect in relation to the Olympic or Paralympic Games).²⁹⁵

291 Mackinnon, D, 'A review of the Sports Tribunal of New Zealand', 2015, SBM Legal.

292 Australian Sports Anti-Doping Authority, *Submission 10*.

293 Sport Resolutions (UK) is an independent, not-for-profit arbitration institution body providing a dispute resolution service for sport in the UK. It also provides hearing rooms and a panel of specialist arbitrators and mediators, and publishes procedural rules for the Tribunal.

294 United Kingdom Anti-Doping, 'UK Anti-Doping Rules 2015' (effective 1 January 2015).

295 Australian Sports Anti-Doping Authority, *Submission 10*.

As we understand it, SRUK is one of the most successful and well-regarded sports arbitration agencies globally – demonstrated in part by its growing client base and expanding remit (in addition to revolving discrete matters, some sports have requested that SRUK conduct broad-reaching reviews). SRUK, like STNZ, offers an ‘opt-in’ arrangement for sports in relation to ADRV and other matters, but the agency’s reputation as a reliable, efficient and cost-effective forum for resolving disputes has resulted in a high level of take up among UK sporting organisations, including a number of professional sports. We note from our consultations²⁹⁶ that SRUK:

- does not have a statutory foundation; however, this had not presented any great cause for concern. Several positive factors in its operation were identified: SRUK ensures that its (closed) list of arbitrators remains current and contemporary by recruiting for particular skills and expertise that are becoming, or are likely to become, highly sought after as disputes arise
- is able to determine a matter on the papers without the need for a hearing (when appropriate), and ensures that every anti-doping decision is published
- ensures that a hearing date is offered within 40 days of receiving notification of a dispute, and a written decision is delivered within three weeks

of the final hearing (though extensions can be agreed)

- operates on a not-for-profit basis, and is cost effective for parties. SRUK receives some funding from government (particularly for the operation of the National Anti-Doping Panel) but manages a zero-profit budget. It balances the books by charging fees essentially on a sliding scale – when a dispute arises in a wealthier sport, parties may be expected to self-fund a greater proportion of the arbitration costs
- built its reputation on clarity in proceedings – it ensures that on every occasion, it is very clear with the parties regarding the number, nature and timing of steps in the conduct of a matter; what is required of the parties; and the result if parties fail to comply with procedural rules and directions.

In our view, the UK model is instructive for the establishment of the proposed NST, with several beneficial aspects of practice and procedure. It is significant that the process followed by the SRUK is Code compliant and is used by international and national-level athletes. In developing the proposed model we have also taken account of several other tribunals in other countries. For information see Appendix C.

296 The Panel consulted Sport Resolutions UK via teleconference on 4 September 2017.

7. THE NATIONAL SPORTS TRIBUNAL

If as recommended in the report the proposed NST is established, it would need to have the following characteristics:

- appropriate powers to obtain evidence and inform itself
- independence
- transparency with respect to decision-making
- cost effective, efficient and flexible in the resolution of disputes
- highly experienced and respected arbitrators available on a closed list.

7.1 ESTABLISHING THE NATIONAL SPORTS TRIBUNAL BY WAY OF STATUTE

In our view, it would be preferable to establish the proposed NST by way of statute, with jurisdiction for ADRV matters mandated through the NAD Scheme, and arising through contractual agreements between athletes and sporting organisations.

ASADA proposed a model²⁹⁷ similar to that provided for by the *Fair Work Act 2009* (Cth) (Fair Work Act), whereby:

- as a precondition for approval the Fair Work Act requires all enterprise agreements to contain a term providing for a third party to settle disputes arising under the agreement.
- where such a dispute resolution term provides for the dispute to be dealt with by way of arbitration by the Fair Work Commission (FWC), the arbitration occurs in accordance with the Fair Work Act.

We agree with this approach. It is possible, in general, to confer arbitral authority on a Commonwealth agency. Under such arrangements, the courts have explained, the Commonwealth agency is exercising a 'power of private arbitration ... [where] the arbitrator's powers depend on the agreement of the parties, usually embodied in a contract.'²⁹⁸ Acting as a private arbitrator, a Commonwealth agency such as the proposed body is understood not to be exercising 'government power'²⁹⁹ or 'public law functions'.³⁰⁰

RECOMMENDATION 27

That the National Sports Tribunal be established by statute, exercising powers of private arbitration underpinned by legislation.

STATUTORY POWERS

One of the principle benefits of establishing the NST as an independent statutory authority is that powers can be vested in the tribunal that cannot be made available to a private arbitral agency such as the CAS or the sports' in-house arbitral tribunals.

We did not receive any submissions from athletes or support people to the effect that an ADRV had been unfairly asserted or established in the absence of any ability to compel exculpatory evidence.

However, given the recent and projected shift towards the need to establish ADRVs through intelligence-based investigations, the necessity for such powers is likely to increase.

297 Australian Sports Anti-Doping Authority, *Submission 10*.

298 *CFMEU v Industrial Relations Commission* (2001) 203 CLR 645, 658.

299 *Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union v ALS Industrial Australia Pty Ltd* (2015) 235 FCR 305, 338.

300 *Linfox Australia Pty Ltd v Transport Workers Union of Australia* (2013) 213 FCR 479, 490.

We consider it desirable that the proposed NST be vested with similar powers and immunities to those of the FWC. The FWC has very broad-reaching powers to inform itself:

FAIR WORK ACT 2009 – SECT. 590 POWERS OF THE FWC TO INFORM ITSELF

Powers of the FWC to inform itself

1. The FWC may, except as provided by this Act, inform itself in relation to any matter before it in such manner as it considers appropriate.
2. Without limiting subsection (1), the FWC may inform itself in the following ways:
 - a. by requiring a person to attend before the FWC
 - b. by inviting, subject to any terms and conditions determined by the FWC, oral or written submissions
 - c. by requiring a person to provide copies of documents or records, or to provide any other information to the FWC
 - d. by taking evidence under oath or affirmation in accordance with the regulations (if any)
 - e. by requiring an FWC Member, a Full Bench or an Expert Panel to prepare a report
 - f. by conducting inquiries
 - g. by undertaking or commissioning research
 - h. by conducting a conference (see section 592)
 - i. by holding a hearing (see section 593).

Failure to comply with an order to attend (as a witness) or an order to produce documents carries reasonably serious penalties including a maximum penalty of 12 months' imprisonment. The FWC can also make adverse findings or adverse comments in published decisions based on a person's failure or refusal to comply with an order.

RECOMMENDATION 28

That the National Sports Tribunal have available appropriate powers to facilitate the effective resolution of cases, including the power to order witnesses to appear before it to give evidence, and/or to produce documents or things; and the power to inform itself independent of submissions by the parties.

INDEPENDENCE

Another benefit of establishing the proposed NST as a statutory entity is that it will have operational independence and be free of any risk of actual or apprehended bias.

This is of particular importance if Australia's anti-doping arrangements are to remain effective and respected nationally and internationally.

We recognise that a right of appeal to the CAS Appeals Arbitration Division from the proposed NST in ADRV cases which it hears must be retained for some parties, including WADA, for Australia to remain Code compliant.³⁰¹ While inevitable, we do not see this as threatening the independence of the proposed NST. It would operate under Australian law and exercise the powers of private arbitration, with judicial review being possible if it exceeded a proper exercise of those powers, but otherwise would maintain operational independence.

We consider that the model proposed would be well suited for the resolution of ADRV cases that are not excluded by reason of the opt-out provisions later outlined, and also for the remaining disputes that are referred to it via the opt-in provisions, which are similarly explained below, as it would have the capacity to provide transparent, consistent, fast and cost-effective resolutions.

RECOMMENDATION 29

That the National Sports Tribunal be an independent statutory authority accountable to the Australian Government, not subject to ministerial direction except under limited circumstances.

301 World Anti-Doping Code, World Anti-Doping Agency (effective as of 1 January 2015) a. 13.2.3.

8. ADDITIONAL PROPOSED CHARACTERISTICS OF THE NATIONAL SPORTS TRIBUNAL

In addition to the inherent (and proposed) features of the proposed NST associated with its status as a statutory authority, it would need to have a number of other key characteristics to be effective in dealing with sport disputes, and to offer an attractive alternative system.

8.1 COST EFFECTIVENESS AND EFFICIENCY

It is envisaged that the proposed NST would offer cost-effective dispute resolution services through:

- ensuring that arbitration costs are minimal (including costs of venue, costs of arbitrators, administration)
- minimising costs of legal representation through ensuring efficient and flexible practice and procedure.

We think it would be appropriate for the Government to fully fund arbitration costs of ADRV matters except in limited circumstances, including where the conduct of a matter has been unreasonably extended through the behaviour of one of the parties.

Arbitration for matters other than those related to ADRV cases might attract some cost to the parties. However, we propose a model similar to the one employed by SRUK, which essentially takes into account the financial status of the sport and the athlete involved when determining arbitration costs.

EFFICIENT PRACTICE AND PROCEDURE

Ensuring that the NST is prompt and efficient in resolving matters will be critical because most sport disputes need to be resolved within contracted periods.

We propose the following:

Clear, easy-to-apply rules, applied consistently

It would be necessary to ensure that the rules and practices of the proposed NST are simple, easy to understand, and easy to apply. Internal procedural policy should also ensure that rules are clearly explained and strictly adhered to throughout

each and every matter. We heard from SRUK that a key element of its success was a high level of consistency in practice and procedure.

Appropriate registry arrangements

ASADA indicated that:

... any national sports integrity tribunal needs to be adequately resourced to allow for timely reasoned decisions to be provided to the parties. In addition, the national sports integrity tribunal must be staffed at an appropriate level with full time staff to act as clerks and provide assistance to Tribunal members and liaison points to the parties.³⁰²

We agree.

To provide it with the necessary staff, it would be appropriate to consider co-locating staff with the proposed NSIC, or to consider the possibility of sharing resources with the AAT. Co-location with the NSIC may be preferable in assisting a further integration of Australia's sporting integrity structure.

Flexibility in practice and procedure

It will be essential that the proposed NST applies a flexible and innovative approach to resolving matters, particularly non-ADRV matters. We think that the model employed by Canada offers attractive analogues, and recommend that the NST:

- has the ability to exercise powers of mediation and conciliation, as well as arbitration
- is able to make a decision on the papers where appropriate

- establishes procedural rules that encourage mediation in certain matters
- offers, as is the case in Canada, 'resolution facilitation' services, including in ADRV matters whereby the parties can agree to confidential assistance in, for instance, reaching agreed facts
- offer pre-action advice, where, by agreement of the parties to a dispute, an arbitrator is requested to give a confidential, non-binding assessment of a matter pre-action.

8.2 TRANSPARENCY

The proposed NST should be transparent in its resolution of sport disputes. ASADA submitted that:

ASADA's submission in relation to the rules of any national sports integrity tribunal would be to have a default position that any decision of the tribunal should be published. Both New Zealand and the UK sports tribunals have a section on their respective websites where decisions are made public.

Transparency in decision making allows key stakeholders to be informed in relation to anti-doping decisions and sanctions that are issued by tribunals. It can provide for greater confidence in the anti-doping system and in general an increased understanding by members of the public.³⁰³

8.3 ARBITRATORS TO HAVE SPECIALISED EXPERTISE

Key to the success of the proposed NST will be the ability of the Australian Government to ensure that it has arbitrators available to the parties that have specialised expertise relevant to sport disputes.

We recommend that the proposed NST maintain a closed list, similar to CAS and SRUK, to ensure that arbitrators are specialised in the area of sports law or sports medicine/sports science, and are therefore able to issue prompt, consistent and reliable decisions.

ASADA proposed that the current members of the ADRV would be excellent candidates due to their experience and understanding of relevant issues:

There would be efficiencies and benefits should the members of the ADRV be invited to be members (legal or other expert members) of any new national sports integrity tribunal. Such appointments would assist to streamline the initial introduction of the tribunal and provide confidence to stakeholders with respect to the appointment of individuals who are familiar with anti-doping processes and investigations.³⁰⁴

We agree. We also think that to fill ongoing vacancies, the proposed NSIC should employ a similar model of selection as developed by SRUK.

RECOMMENDATION 30

To improve current national sports dispute resolution arrangements, the National Sports Tribunal (NST) must:

- be cost effective for sports and athletes, with funding provided in part by Government and in part on a user-pays basis (on a sliding scale based on financial capacity)
- be efficient, including with regard to clear, consistently applied and flexible practice and procedure
- be transparent, publishing decisions by default, with discretion to withhold confidential material or sensitive decisions by the NST on application by the parties
- have pre-eminent arbitrators available on a closed list, with appointment to the list by application and selection processes conducted by the proposed National Sports Integrity Commission in consultation with the Minister for Sport.

303 Ibid.
304 Ibid.

9. JURISDICTION AND STRUCTURE OF A NATIONAL SPORTS TRIBUNAL

There is significant merit in extending the jurisdiction of the proposed NST on an opt-in basis to include sporting disputes beyond ADRV matters.

We anticipate that this would benefit the sporting community, and especially the smaller, less well-resourced sports, through simplifying dispute resolution to a single avenue. Smaller sports, in particular, were supportive of the proposed NST having available the jurisdiction to settle a broad range of disputes.

The proposed NST should be comprised of two first-instance divisions – an Anti-Doping Division (ADD) and a General Division (GD) – to accommodate the different rules and procedures that may need to apply to ADRV matters. General Division matters are adapted to a greater level of flexibility.

Also, the proposed NST should have an Appeals Division – for both ADRV and general matters. Given the powers that should be available to the NST to obtain evidence and otherwise inform itself of relevant matters, we also think that the preferable approach would include an ‘expedited appeal’ process whereby, except in exceptional circumstances, the Appeals Division would be able to decide a matter on the papers (rather than conducting full proceedings for a second time).

RECOMMENDATION 31

That the National Sports Tribunal (NST) have two first-instance divisions – the Anti-Doping Division, and the General Division, and that the NST also offer an Appeals Division for both the Anti-Doping Division and General Division. That a further avenue of appeal to Court of Arbitration for Sport Appeals Arbitration Division be available in all instances where this is a requirement for maintaining compliance with the Code.

9.1 THE ANTI-DOPING DIVISION – OPT-OUT PROVISION

Stakeholders expressed differing views regarding the jurisdiction of the proposed NST in relation to ADRV matters.

We acknowledge the COMPPS position (see COMPPS quote on page 57) that where a sport has an internal tribunal, it should be able to retain control over the ADRV dispute hearing process. We consider that this is appropriate provided the conditions discussed below are met.

COMPPS also submitted that retaining control of sports disputes, including ADRV matters, was critical due to the specific expertise of the tribunal members with regard to their respective sport:

The tribunal members are not called upon often but they deal with a diverse caseload. This involves on-field infractions, off-field player behaviour, salary cap breaches, player eligibility, relationships with criminals, match-fixing and doping breaches and various other issues that emerge from the often surprising, but always challenging and usually media-fascinating business of running a sporting body. They sit often enough, however, to have an understanding of the peculiar features, vagaries and nuances of the sport that impact on disciplinary matters. They understand how the game is played how it is regulated and how it is refereed. They are familiar with earlier decisions that impact on their deliberations. This familiarity with the sport is an important part of the disciplinary process.³⁰⁵

and:

The Sports have a low number of ADRV hearings. They also have a low number of betting related corruption hearings.³⁰⁶

³⁰⁵ Ibid.
³⁰⁶ Ibid.

Our agreement in this respect is subject to the proposed NSIC, with ASADA, being satisfied that the sport-run internal tribunal (including any sport-run internal appeals tribunal) is sufficiently well established and suitable to permit an opt-out from the scheme for ADRV matters.

Accordingly, the jurisdiction of the proposed NST for ADRV matters should operate as an opt-out system, given effect through the NAD Scheme and the requirements of achieving and maintaining status as a sports controlling body. The sports with an approved internal tribunal (including, where applicable, a sports-run internal appeals tribunal) would continue to deal with ADRV matters in that tribunal.

This model would essentially work in the same way as the current system whereby ASADA-approved anti-doping policies under the NAD Scheme default to the first-instance jurisdiction of CAS, unless a sport seeks and obtains approval from ASADA to use other arrangements.

As we understand it, when approval is sought from ASADA to operate alternative ADRV-hearing arrangements, ASADA examines the proposed arrangements and applies a standard of probity, efficiency and integrity. In our proposed model, the NSIC, with ASADA, would do a similar assessment.

LEAVE TO HAVE A MATTER HEARD IN THE NST

While the opt-out model would operate to ensure quality in decision-making in approved sports-run internal tribunals, for consistency, it would be preferable, where the sport does not have an internal tribunal, for any ADRV case to be dealt with in the ADD of the proposed NST. In addition, we consider it desirable for there to be a mechanism whereby a party – whose case would normally be dealt with in a sports-run internal tribunal – have leave to apply to that tribunal to have the matter dealt with in the proposed NST – that is, where the interests of fairness would so justify by allowing the exercise of evidence presentation that would not otherwise be available. This right should apply to the participant, ASADA and the sport.

Provision should be made accordingly in the anti-doping rules of sports to provide for such a leave procedure. Effect should be given to this through the NAD Scheme and as a condition of maintaining SCB status.

ASADA suggested that:

In the case of those sports [that choose to retain their own ADRV-resolution arrangements] there should always be an option for the athlete to elect to have a hearing before the national independent body (that ideally has powers) as opposed to the sport's own tribunal (that has no powers).³⁰⁷

ADRV APPEALS

We recognise that in relation to ADRVs involving international-level athletes or athletes competing at international events, first-instance decisions may be appealed exclusively to the CAS Appeals Arbitration Division. We also recognise that both national and international-level athletes may, with the consent of others, including ASADA and WADA, elect to have a single hearing before the CAS Appeals Arbitration Division.³⁰⁸ We understand that to date the latter has not occurred in Australia.

Australia's ADRV dispute resolution system, including the proposed NST, must be fully compliant with all requirements of the Code, including the above provisions, and the ability of WADA to appeal directly to the CAS Appeals Arbitration Division (without the need to exhaust other internal remedies).

In the interests of consistency and efficiency, it would be preferable for all ADRV matters on appeal – whether from the NST or sport-run first-instance tribunals (subject to the exercise of any appeal rights to CAS) – to be heard by the proposed NST Appeals Division. However, we also recognise the existence of internal appeals tribunals for some sports in Australia, and the preference of those sports to continue to operate such bodies. While not optimal, we believe this can be accommodated in the proposed system, albeit noting such appeal bodies will also require approval from the proposed NSIC.

307 Australian Sports Anti-Doping Authority, *Submission 10*.
308 *World Anti-Doping Code*, World Anti-Doping Agency (effective as of 1 January 2015) a. 8.5

Subject to the above qualifications, in circumstances where a sporting organisation retains an internal tribunal for ADRV matters in the first instance, appeals might be heard by (subject to the rules of the sporting organisations) one of the following bodies:

- any appeals board which may form part of the sporting organisation's internal dispute resolution arrangements
- the NST Appeals Division
- the CAS Appeals Arbitration Division.

In circumstances where the proposed NST is the hearing body for first-instance ADRV matters, appeals should be heard by the NST Appeals Division or the CAS Appeals Arbitration Division (as appropriate, and subject to the rules of the sport).

RECOMMENDATION 32

That the National Sports Tribunal (NST) be the default dispute resolution body responsible for arbitrating anti-doping matters other than in circumstances where a sporting organisation has obtained approval from the National Sports Integrity Commission to retain in-house dispute resolution arrangements (conditional opt-out jurisdiction of the NST).

RECOMMENDATION 33

That, in recognition of the extra powers available to the National Sports Tribunal (NST) to order witnesses to appear before it to give evidence, and/or to produce documents or things; an athlete or support person subject of an Anti-Doping Rule Violation assertion who participates in a sport which has an National Sports Integrity Commission-approved in-house dispute resolution tribunal, be entitled to seek leave from that tribunal to have their matter heard in the NST where justice requires. A similar provision should apply to the Australian Sports Anti-Doping Authority or the Sports Controlling Body where that is necessary for a fair and just outcome.

RECOMMENDATION 34

That in circumstances where the National Sports Tribunal (NST) is the hearing body for first-instance Anti-Doping Rule Violation matters, appeals be heard at the option of the aggrieved party by the NST Appeals Division or the Court of Arbitration for Sport Appeals Arbitration Division (as appropriate, and subject to the rules of the sport).

RECOMMENDATION 35

That engagement with the conditional opt-out system for Anti-Doping Rule Violation arbitration be a requirement of achieving and maintaining Sports Controlling Body status (required for Australian Sports Commission funding and to participate in the Australian Sports Wagering Scheme).

9.2 THE NATIONAL SPORTS TRIBUNAL GENERAL DIVISION – OPT-IN PROVISION

In-house sport-run tribunals have an important role to play in the sports integrity framework and in dealing with general sports disputes other than those involving ADRVs.

We agree with COMPPS that sport-run tribunals are able to apply a high level of professional expertise and understanding of the particularities of their respective sports, which can be vital in dealing with these matters consistently and efficiently. COMPPS noted:

Cricket has introduced effective processes in this area. It invests in annual workshops at which it provides “training” to Commissioners on changes to CA’s rules, updates on strategy and changes to the Australian cricket landscape so they have a broad understanding of the issues that may come before them. It is also an opportunity for them to exchange ideas and discuss previous decisions and rulings. As well as being selected for their outstanding legal “pedigrees” the Commissioners are selected by CA because they have a deep connection with the sport through participation as players or volunteers at the community level. This gives them an intuitive understanding of the game, the players and their issues and gives CA confidence it will get sensible outcomes from each individual Commissioner.³⁰⁹

We acknowledge the value of this kind of approach by individual sports and do not seek in this report to diminish such strategies.

However, not all sports have the means available to establish similar integrity capabilities or internal tribunals, and the reality is that as sport becomes increasingly more professional and commercial, one can expect to see more disputes, including for non-ADRV matters.

In an environment where funding will always be in demand, Australia needs a sport dispute resolution system which does its utmost to offer fast, effective and transparent dispute resolution which also, within reason, keeps the costs of litigation to a minimum.

AN OPT-IN MODEL

AAA proposed:

[T]he tribunal [be] voluntary: both the sport and its athletes could agree what matters are subject to its jurisdiction and make retrospective if they agree to do so. For instance, a sport could limit jurisdiction to appeals in doping cases as an alternative to CAS or expand jurisdiction to any dispute that arises between or among athletes, governing bodies, and its entities (clubs, etc.).³¹⁰

We agree with this approach. Under the proposed arrangements, we would expect that in the interim, matters lodged in the GD of the NST will be brought to it through case-by-case agreement between athletes and support people and sporting organisations. As the NST builds its reputation, and as collective agreements roll over and are replaced, we expect that its jurisdiction might be formalised in contractual arrangements between sports and athletes.

The NST, particularly in its GD jurisdiction, should be empowered to offer mediation, conciliation and other innovative services as an alternative to formal arbitration. This is critical to avoid some of the difficulties experienced by the NZST, as identified in the 2015 review:

‘In the majority of such cases, the parties have proceeded to a defended hearing in the Tribunal without having first attempted any form of alternative dispute resolution (ADR) such as mediation. In the author’s view, the lack of promotion of mediation, or any similar form of ADR, is a substantial gap in the current dispute resolution needs of New Zealand sport.’³¹¹

We anticipate that, based on the experience of similar international models, the workload of the NST GD will grow rapidly.

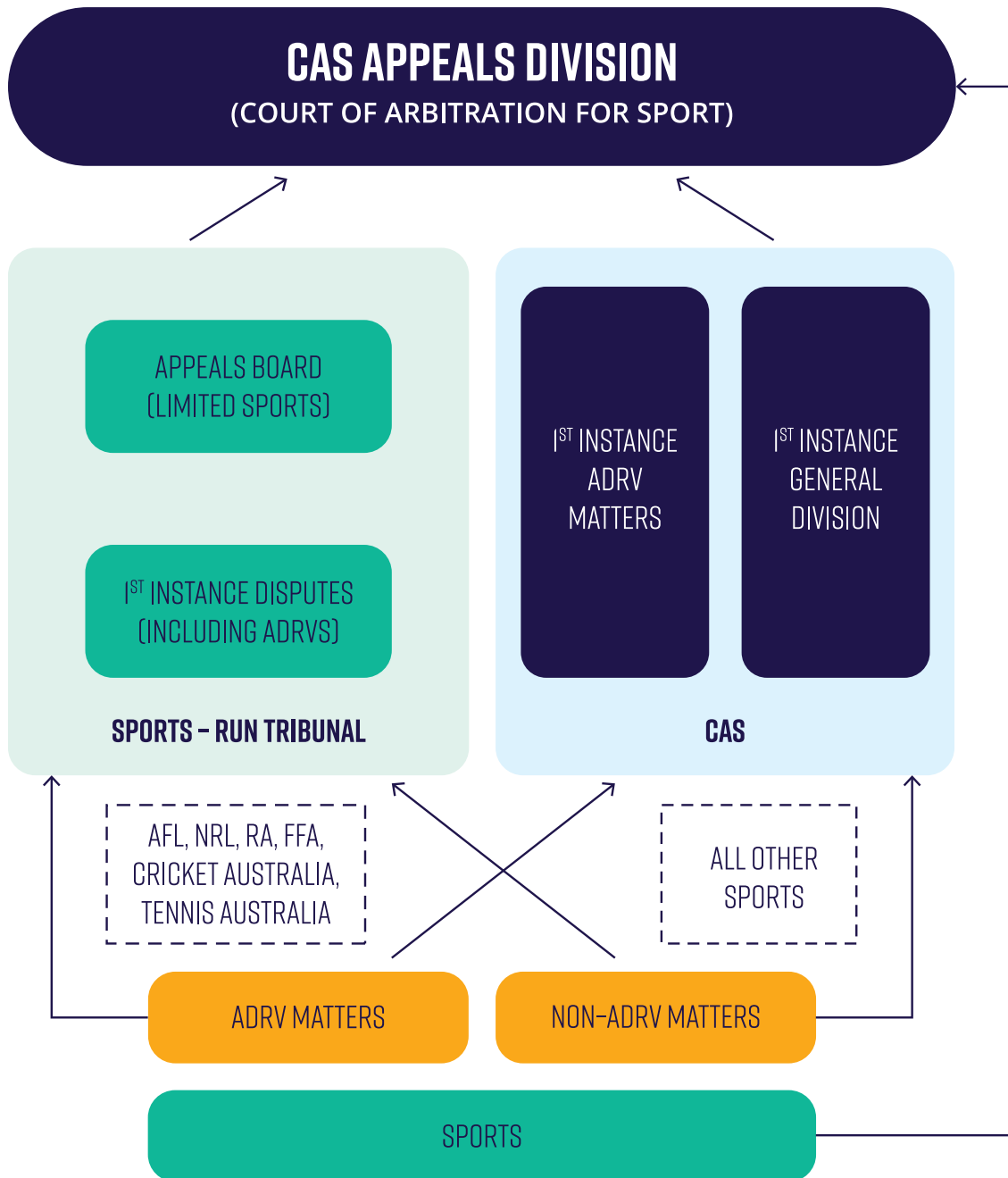
309 Coalition of Major Professional and Participation Sports, *Submission 20*.

310 Australian Athletes’ Alliance, *Submission 25*.

311 Mackinnon, D, *A review of the Sports Tribunal of New Zealand*, 2015, SBM Legal.

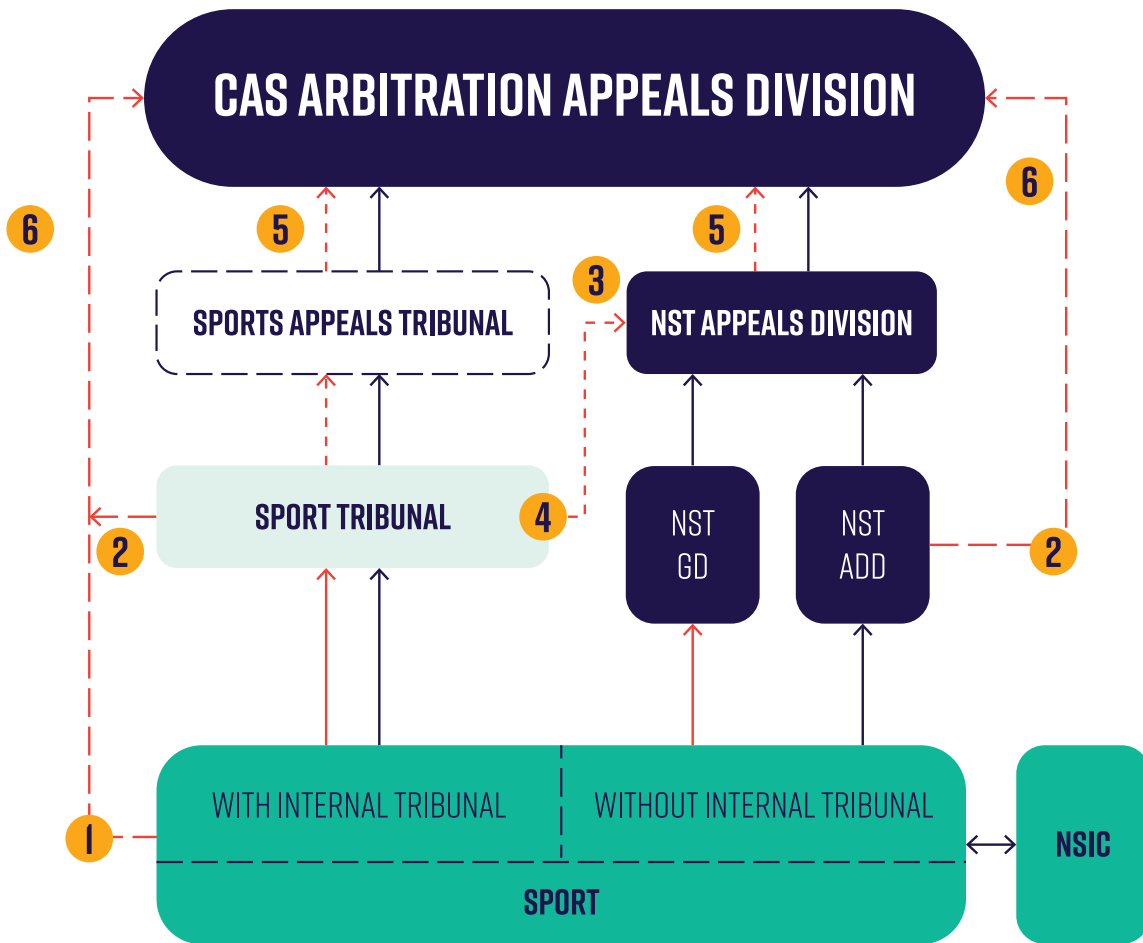
Figure 7: Current and proposed dispute resolution arrangements

CURRENT ARRANGEMENTS FOR ANTI-DOPING RULE VIOLATION AND GENERAL SPORT DISPUTE RESOLUTION



The World Anti-Doping Code requires that there be direct access to the appeals division of CAS on agreement of both parties.

PROPOSED ARRANGEMENTS FOR ANTI-DOPING RULE VIOLATION AND GENERAL SPORT DISPUTE RESOLUTION



— ADVRs "Opt out"
— Other integrity issues "Opt in"

- 1 "By pass" Provision World Anti-Doping Code 8.5
- 2 International Level Athletes exclusive appeal right to CAS WADC 13.2.1
- 3 Sports without appeals tribunals may access NST appeals division
- 4 "Leave" provision to access NST at discretion of sport
- 5 Further access to CAS Arbitration Appeals Division dependent on sport rules
- 6 WADA appeal provision applies throughout

RECOMMENDATION 36

That the proposed National Sports Tribunal (NST) also exercise jurisdiction to resolve other sport disputes, in so far as athletes and sporting organisations have elected through contractual arrangements to have disputes of particular types resolved by the NST in its General and Appeal Divisions as may be required.

RECOMMENDATION 37

For general disputes, that the proposed National Sports Tribunal (NST) be established in such way that it can provide arbitration, mediation and conciliation services, depending on the needs of the sporting organisation and, where appropriate, the right of appeal to the NST Appeals Division.

CHAPTER

6

A NATIONAL SPORTS INTEGRITY COMMISSION

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I. INTRODUCTION

A key term of reference for this Review has been a consideration of the merits of establishing a National Sports Integrity Commission (NSIC).

The advantages of establishing a National Platform, and vesting that role in the NSIC, have been noted in passing, in the preceding chapters, as a means of securing a centrally coordinated response to sports integrity issues in Australia. Those advantages include the opportunity to overcome the silo effect that currently exists where multiple bodies including NSOs, law-enforcement and regulatory

agencies are engaged, and where the difficulties in securing a coordinated response are compounded by a federal system with differences in state/territory and federal regulatory and criminal laws.

In this chapter, we explore in further detail the reasons for establishing a NSIC and its possible structure and functions.

2. KEY FINDINGS AND RECOMMENDATIONS

KEY FINDINGS

AUSTRALIA'S NATIONAL APPROACH TO SPORTS INTEGRITY

1. As threats to the integrity of sport continue to evolve, Australia's vulnerability to further and future compromise is exacerbated by failures to comprehensively implement nationally consistent legislative measures and other protections, and develop centralised intelligence and law-enforcement capabilities to connect Commonwealth and state and territory agencies, enabling agile and decisive responses.
2. No single existing entity holds all of the intelligence, data, resources or capabilities to effectively address the threat of match-fixing and related corruption, and other integrity threats, by itself. Despite significant efforts made by the sports sector to develop integrity measures, it remains vulnerable to criminal infiltration and exploitation.
3. To ensure the confidence of the community in Australian sport, and advance Australia's reputation as a foremost advocate for protection of sports integrity, a recalibrated and cohesive national response is required, featuring improved structures and systems to aid collaboration and partnership across all relevant stakeholders including international counterparts.
4. Australia needs an independent, central, national body with the expertise and reach to monitor issues across the sports integrity continuum, and to ensure such issues that may require further action are systematically referred to law enforcement, National Sporting Organisations or other bodies as appropriate, for response. This includes monitoring and developing responses to new and emerging issues including the ongoing accreditation of athlete support personnel; supply and use of performance and image enhancing drugs; gender issues in sport; wagering on emerging sports without a controlling body (such as e-sports); child protection; and player welfare issues, particularly at junior level.
5. A number of small and emerging sports in Australia have limited resources, budgets and staff to deal with integrity issues, and need ongoing help from a central national body with the necessary expertise and international connections.

DETECTION AND LAW-ENFORCEMENT RESPONSE

6. Current and future foreseeable sports integrity threats cannot be effectively addressed without a formal, national capability dedicated to coordinating the collection, analysis and dissemination of information and intelligence from law-enforcement agencies, sporting organisations and the wagering industry, nationally and internationally.
7. The Sports Betting Integrity Unit, recently established by the Australian Criminal Intelligence Commission and National Integrity of Sport Unit, significantly advances previous capability and coordination but requires long-term support, and is not yet able to meet collective ongoing requirements.

POLICY AND PROGRAM MANAGEMENT

8. The Australian Government through the Australian Sports Commission, Australian Sports Anti-Doping Authority and National Integrity of Sport Unit, and sporting organisations, have made significant investments in building organisational capacity and industry resilience. However, there remains a lack of a coherent, single point of reference and overall coordination of response across the continuum of integrity threats, which must be addressed.

EDUCATION

9. A comprehensive sports integrity education program for athletes, support personnel, and staff and management of sporting organisations is critical. Current education arrangements are dispersed and consequently lack sufficient clarity, consistency and impact. A National Sports Integrity Commission could address this critical need.

RECOMMENDATIONS

1. That the Australian Government establish a National Sports Integrity Commission to cohesively draw together and develop existing sports integrity capabilities, knowledge and expertise, and to nationally coordinate all elements of the sports integrity threat response including prevention, monitoring and detection, investigation, and enforcement.
2. That the National Sports Integrity Commission be identified as Australia's National Platform for the purposes of the Macolin Convention.
3. That the National Sports Integrity Commission have three primary areas of focus:
 - regulation
 - monitoring, intelligence and investigations
 - policy and program delivery (including education, outreach and development).

NATIONAL SPORTS INTEGRITY COMMISSION - REGULATION

4. That the National Sports Integrity Commission be responsible for overseeing and coordinating the regulation of sports wagering in Australia, working in close collaboration with state and territory gambling regulators, Sports Controlling Bodies and Wagering Service Providers, as part of the proposed Australian Sports Wagering Scheme.
5. That the National Sports Integrity Commission (NSIC) be authorised to deal with information captured by the *Privacy Act*, and have the ability to collect and use 'sensitive information' about a person without consent. The NSIC be designated as a law-enforcement agency to have the confidence of international and Australian law-enforcement agencies as both a receiver and provider of personal information, and material alleging criminality.

NATIONAL SPORTS INTEGRITY COMMISSION - MONITORING, INTELLIGENCE AND INVESTIGATIONS

6. That a formal, ongoing Sports Betting Integrity Unit (SBIU) be established within the National Sports Integrity Commission (with functions transferred from the SBIU recently established within the Australian Criminal Intelligence Commission) to allow for the systematic receipt, assessment and dissemination of information relating to suspicious betting activity, and undertake an ongoing regulatory monitoring, compliance and enforcement function.
7. That a Joint Intelligence and Investigations Unit (JIU) be established in the National Sports Integrity Commission, with dedicated representatives of state and territory law-enforcement agencies, as well as relevant Commonwealth agencies including the Australian Criminal Intelligence Commission, Australian Federal Police, Australian Sports Anti-Doping Authority and the Department of Home Affairs. The JIU to be responsible for: intelligence collection and analysis for the broad range of sports integrity issues; liaison with domestic and international law-enforcement agencies and criminal intelligence commissions; and referral services – to law enforcement in criminal matters, and to sporting organisations for code of conduct issues.
8. That a Strategic Analysis Unit be established as part of the National Sports Integrity Commission, and be responsible for conducting open-source threat identification and analysis including: monitoring of illegal offshore wagering market framing; conducting strategic and threat analyses and providing advice (including in relation to Sport Integrity Threat Overviews); and determining a schedule of authorised wagering contingencies.
9. That the National Sports Integrity Commission (NSIC) work closely with the Australian Criminal Intelligence Commission (ACIC) and that the ACIC be resourced to maintain a standing, advanced sports criminal intelligence capability to: enable enhanced analysis and exploitation of NSIC data and intelligence products; support the NSIC through advanced intelligence capabilities; and proactively develop intelligence on serious organised criminality linked to sport but outside the remit of the NSIC (e.g. money laundering through Wagering Service Providers).

10. That a whistleblower scheme encompassing all sports integrity issues, and a related source protection framework, be administered by the National Sports Integrity Commission.
11. That the proposed National Sports Integrity Commission work with major professional sports regarding illicit drugs policies with a view to seeking access to results of sample analysis for integrating with intelligence and analysis capabilities.

POLICY AND PROGRAM DELIVERY

12. That consideration be given to the National Sports Integrity Commission becoming responsible for centrally coordinating sports integrity policy functions previously executed by a number of different organisations including the Australian Sports Commission, the Good Sports Program (through the Alcohol and Drug Foundation), and National Integrity of Sport Unit.
13. That the National Sports Integrity Commission be a single point of contact for athletes, sporting organisations, Sports Wagering Service Providers and other stakeholders for matters relating to sports integrity.
14. That the National Sports Integrity Commission provide direct assistance to small and emerging sports in Australia that lack capacity to deal with integrity issues.
15. That a single, easily identifiable education and outreach platform be established within the National Sports Integrity Commission (NSIC), dedicated to developing and coordinating education, training and outreach resources and programs with the Australian Sports Anti-Doping Authority, Australian Sports Commission, sports (particularly Coalition of Major Professional and Participation Sport integrity units) and athletes, including athletes' associations. Administration of existing initiatives and forums, including the Australian Sports Integrity Network, Jurisdictional Sports Integrity Network, Betting Regulators forum and Play by the Rules, should be incorporated into the NSIC education and outreach platform.

3. THE NEED FOR A NATIONAL SPORTS INTEGRITY COMMISSION

In contemplating the need for a National Sports Integrity Commission (NSIC), we recognise the fundamental role of the sporting sector in protecting Australian sport from integrity challenges, and we acknowledge in particular the efforts of Australian sporting organisations that have established dedicated integrity units and developed integrity capabilities, particularly in professional sports. It is critical that Australian sporting organisations continue their efforts to confront integrity challenges, and that Government sports integrity initiatives be designed to support and service these efforts, particularly for the less well-resourced sports.

Three overriding themes have become evident throughout the course of this Review, which must be addressed if the integrity of sport in Australia is to be adequately protected:

1. The current deficiencies and impediments in the ability to collect, analyse and disseminate information and intelligence relating to the full complement of integrity issues at the national level hinders effective coordination across stakeholders, and increases the overall risk of compromises of Australian sport and sporting competitions.
2. Although key stakeholders (particularly NSOs) are required to maintain ongoing dialogue (including for compliance with reporting requirements) with a broad range of stakeholders with varying responsibilities across the sports integrity continuum, this leaves gaps in relation to issues where a responsible government agency cannot be easily identified, and creates duplication and other inefficiencies, particularly in reporting requirements. In short, a single point of reference for all sports integrity matters is required.

3. While sports integrity resourcing and capability varies considerably across NSOs, it generally diminishes quickly beyond elite levels and professional sports.

These difficulties can only be exacerbated in an environment of increasing integrity threat complexity, particularly in relation to the expanding global wagering environment, ongoing spectre of infiltration and exploitation of sport by organised crime, and increasing sophistication of doping.

A majority of stakeholders indicated support for a central sports integrity 'clearing house' which, at a high level, would be responsible for cohesively drawing together existing sports integrity capabilities, knowledge and experience; and coordinating, nationally, all elements of the integrity threat response continuum: prevention, monitoring and detection, investigation, and enforcement.

The AFP, ACIC, Victoria Police, Tasmania Police, Queensland Police Service and NSW Police indicated support for a national sports integrity coordination model, at least for law enforcement. Victoria Police also noted that its leading efforts in national and international coordination and relationship management with sports integrity

stakeholders would more comfortably sit at the national level and indicated support for a model where 'all the strands of sport integrity could be brought together'.³¹²

ASADA strongly supported the establishment of a national commission working closely with but independent from ASADA (respecting the operational independence of ASADA as Australia's NADO as required under the Code) to tackle sports integrity issues across the continuum.³¹³

Many 'smaller' sports – sports not part of the COMPPS coalition – indicated support for a national body with a sports integrity focus. Others, while not as specifically in support of the establishment of a new entity, indicated a preference for an identifiable 'single point of contact' for sports integrity issues.

COMPPS indicated strong support for national regulation or coordination of sports integrity issues:

There are some key issues that need to be addressed at a national level. These include:

- National match-fixing legislation
- Nationally coordinated or federal sports controlling body legislation to reflect the Victorian and NSW system
- A coordinated and effective national intelligence-sharing platform³¹⁴

However, COMPPS demonstrated less enthusiasm for the establishment of a national commission *per se*:

We feel that a national commission that is constituted as a government agency will have limited effectiveness, as the practical delivery of enhanced integrity outcomes must come from industry cooperation.³¹⁵

While respecting that position and in particular acknowledging the substantial investment in integrity by many COMPPS NSOs, it is our view that the establishment of a the proposed NSIC is the preferred approach.

3.1 NATIONAL SPORTS INTEGRITY COMMISSION TO BE AUSTRALIA'S 'NATIONAL PLATFORM'

To some extent, the kinds of capabilities and responsibilities that we consider essential if Australia is to retain an effective and world-leading response to sports corruption have been delivered by the NISU, with the ACIC and the SBIU.

However, the NISU as the coordinating unit does not have a statutory basis or legislatively conferred powers. Such powers, as they may have been exercised in the context of exploring the threats to sports integrity, have been derived through those available to the ACIC. In our view this should be addressed by establishing a National Platform under legislation that would definitively spell out the National Platform's functions, responsibilities and powers.

As envisaged, the NSIC would be the central point for overseeing the full range of integrity issues and challenges including collecting, assessing and disseminating relevant intelligence to policing and other law-enforcement agencies and NSOs, and other relevant organisations as may be appropriate. It would have extra functions in supporting sporting bodies in the development of their own integrity requirements and capabilities, including education and training. It would also have a strategic assessment role in relation to risk levels and threats in individual sports and of their capacity to manage those risks or threats, in line with the SITAM approach mentioned earlier in this report.

Additionally, the NSIC would be responsible for the management of the proposed ASWS.

While some of the foregoing strategies could possibly be achieved through giving the NISU a more formal status and a conferral of powers, we do not see this as the ultimate solution.

Our preferred approach is that ultimately:

- The NSIC is established, and powers and responsibilities of any pre-existing 'National Platform' entity are vested in the NSIC.
- Australia, as Party to the Macolin Convention, nominates the NSIC as its 'National Platform' for the administrative purposes of the Convention Secretariat.

312 The Panel consulted Victoria Police on 24 August 2017.

313 The Panel consulted with David Sharpe APM OAM on 2 November 2017.

314 Coalition of Major Professional and Participation Sports, *Submission 20*.

315 *Ibid.*

RECOMMENDATION 38

That the Australian Government establish a National Sports Integrity Commission to cohesively draw together and develop existing sports integrity capabilities, knowledge and expertise; and to nationally coordinate all elements of the sports integrity threat response including prevention, monitoring and detection, investigation, and enforcement.

RECOMMENDATION 39

That the National Sports Integrity Commission be identified as Australia's National Platform for the purposes of the Macolin Convention.

4. KEY ELEMENTS OF A NATIONAL SPORTS INTEGRITY COMMISSION

The proposed NSIC, representing the national sports integrity capability, should be structured and equipped to provide functions over three key areas of focus:

- regulation
- monitoring, intelligence and investigations
- policy and program delivery (including education, outreach and development).

These elements are outlined in more detail below.

RECOMMENDATION 40

That the National Sports Integrity Commission have three primary areas of focus:

- regulation
- monitoring, intelligence and investigations
- policy and program delivery (incorporating education, outreach and development).

5. REGULATION OF SPORTS WAGERING

Throughout the consultation phase of the Review we identified broad support for national, centralised regulation of the sports wagering market in Australia,³¹⁶ with some exceptions.³¹⁷

Stakeholders supported central governance as an opportunity to streamline current processes; and provide clarity, transparency and consistency regarding the regulatory regime at a national level.³¹⁸

As noted above, it is envisaged the NSIC would be vested with the sports wagering regulatory functions that would fall within the ASWS, including:

- accreditation of SCBs, including ongoing monitoring of implementation and adherence to relevant integrity policies and procedures for the purposes of assessing eligibility for government funding
- accreditation of SWSPs
- administration of the SAAS
- administering a dispute resolution function in cases where an agreement cannot be reached between a SWSP and SCB
- monitoring compliance with authorised wagering contingencies
- establishing, in consultation with relevant bodies, a list of approved sports wagering contingencies

- monitoring the risks attaching to offshore wagering opportunities in relation to sports integrity in Australia.

Given the urgency of establishing a National Platform discussed earlier in this report, should there be any delay in the establishment of the NSIC, any National Platform established in the interim, including any regulatory function as outlined above, should be subsumed by the NSIC upon establishment.

RECOMMENDATION 4I

That the National Sports Integrity Commission be responsible for overseeing and coordinating the regulation of sports wagering in Australia, working in close collaboration with state and territory gambling regulators, sports controlling bodies, and wagering service providers, as part of the proposed Australian Sports Wagering Scheme.

316 Addisons, *Submission 23*; Australian Sports Commission (the Panel met on 18 August 2017); Sports (including Coalition of Major Professional and Participation Sports, *Submission 20*); Tabcorp, *Submission 29*; Responsible Wagering Australia, *Submission 33*; Australian Federal Police, *Submission 22* (in terms of centralised legislation and regulation); Victorian Government (in a very broad sense).

317 Tasmanian Government Department of Treasury and Finance, *Submission 19*; Queensland Government, *Submission 24* (neutral on this issue); whereas the Northern Territory Government, *Submission 26*, indicated sufficiency in territory responses (without expressing a negative view as such); New South Wales Office of Liquor, Gaming and Racing (the Panel met on 4 September 2017).

318 Tabcorp, *Submission 29*; Addisons, *Submission 23*; Responsible Wagering Australia, *Submission 33*.

6. INFORMATION SHARING

We have previously noted the requirement for improved information sharing across the sports integrity sector, and the need for any National Platform, with regulatory and monitoring responsibilities, to be able to deal with information effectively.

We recommended in Chapter 3 that, to have the confidence of international and Australian law-enforcement and other agencies as both a receiver and provider of personal information and material alleging criminality, the 'National Platform' must be designated as a 'law-enforcement agency'.

In addition to the enhanced investigation and intelligence collection functions of the NSIC which are discussed below, the current information-gathering role of the NISU should be transferred to the NSIC.

RECOMMENDATION 42

That the National Sports Integrity Commission (NSIC) be authorised to deal with information captured by the *Privacy Act 1988* (Cth), and have the ability to collect and use 'sensitive information' about a person without consent. That the NSIC be designated as a law-enforcement agency to have the confidence of international and Australian law-enforcement agencies as both a receiver and provider of personal information, and material alleging criminality.

7. MONITORING, INTELLIGENCE AND INVESTIGATIONS

7.1 SPORTS BETTING INTEGRITY UNIT

We propose that the recently formed SBIU within the ACIC be relocated to the proposed NSIC. We discussed the SBIU in some detail earlier and envisaged that, as part of the National Platform structure, the SBIU would, in addition to current capabilities:

- operationalise the Suspicious Activity Alert Scheme (SAAS), allowing for immediate responses to sport wagering integrity threats, and enabling the SBIU to operationalise a function whereby betting markets can be nationally suspended
- engage sports wagering fraud detection providers to monitor and provide leads and intelligence in relation to suspicious activity in domestic and international betting markets associated with Australian sporting fixtures.

The SBIU will be a critical element of the NSIC, providing a real-time, enhanced intelligence overlay with strong links to the ACIC.

As envisaged, the role of the NSIC would be providing support for police and other law-enforcement agencies or, where appropriate, initiating law-enforcement action, in relation to match-fixing and allied sports corruption offences, although without assuming a direct prosecutorial role. On that understanding its role would be similar to that of the ACIC. Its role in relation to integrity breaches that do not constitute criminal offences but justify punitive action by NSOs would be similar, with an added responsibility to monitor the effectiveness of such responses, including if necessary a review of the appropriateness of that sports' continuing controlling body status.

RECOMMENDATION 43

That a formal, ongoing Sports Betting Integrity Unit (SBIU) be established within the National Sports Integrity Commission (with functions transferred from the SBIU recently established within the Australian Criminal Intelligence Commission) to allow for the systematic receipt, assessment and dissemination of information relating to suspicious betting activity, and undertake an ongoing regulatory monitoring, compliance and enforcement function.

7.2 SECONDED LAW-ENFORCEMENT GROUP (JIU)

We propose that a seconded law-enforcement group comprising representatives from each state and territory law-enforcement agency, AFP, Department of Home Affairs and ASADA, known as the Joint Intelligence and Investigations Unit (JIU), be established within the NSIC.³¹⁹

The JIU would operate as a joint agency sports integrity investigation coordination unit, responsible for leads analysis and triage for all sports integrity matters (including betting integrity leads from the SBIU), with referral of matters to Commonwealth, state/territory law-enforcement agencies, sporting organisations, and/or dispute resolution bodies³²⁰ for action as appropriate.

While it is not possible to exert direct control over the unregulated offshore betting markets, the capacity for an enhanced engagement with international law-enforcement agencies and international

319 Support was indicated for this type of model from the ACIC, Victoria Police and the AFP, which noted specifically that limited resources meant that secondments for sports integrity investigations would not be considered until such time that it would be possible to dedicate resources to a single central entity (in contrast to secondments to each state and territory).

320 To the extent that such a jurisdiction for the dispute resolution body has been enlivened through the terms of the agreement between the sport and the athlete.

sports controlling bodies that would be assisted by becoming a party to the Macolin Convention would provide a valuable advance in the capability of Australia to combat sports corruption generally.

In addition to the combined capacity of ACIC and wagering fraud detection services to monitor the presence of possible suspicious betting on Australian fixtures via offshore betting markets, access to assistance from their international counterparts would provide valuable opportunities for domestic investigations and enforcement of match-fixing offences, and for domestic disruption and prevention activities.

The JIIU would, through this monitoring role, also be well placed to assist with aspects of the ASWS, including the monitoring of datacasting activities by unauthorised data scouts – particularly for betting on contingencies occurring at the lower levels of sporting competitions where there has been less visibility to date.

RECOMMENDATION 44

That a Joint Intelligence and Investigations Unit (JIIU) be established in the National Sports Integrity Commission, with dedicated representatives of state and territory law-enforcement agencies, as well as relevant Commonwealth agencies including Australian Criminal Intelligence Commission, Australian Federal Police, Australian Sports Anti-Doping Authority and the Department of Home Affairs. The JIIU is to be responsible for: intelligence collection and analysis with respect to the broad range of sports integrity issues; liaison with domestic and international law-enforcement agencies and criminal intelligence commissions; and referral services – to law enforcement in criminal matters, and to sporting organisations for code of conduct issues.

7.3 STRATEGIC ANALYSIS

The ability to provide ongoing strategic analysis and advice regarding sports integrity threats is an important feature of the proposed NSIC. We propose that a Strategic Analysis Unit (SAU) be formed to fulfil this purpose. It would complement the functions of the SBIU, JIIU and the sports wagering regulatory function of the NSIC.

The SAU would be responsible for:

- open-source³²¹ monitoring of all sports integrity threats
- producing and disseminating information and reports regarding sports integrity threats and developments, primarily for NSOs
- conducting sports integrity threat assessments in line with the SITAM model
- determining, in collaboration with NSOs, strategies to reduce risk exposure where required
- conducting sports integrity compliance audits
- maintaining a register of approved sports wagering contingency schedules, and monitoring their vulnerability to sports corruption.

It is envisaged that proactive monitoring of the strategic threat environment through the SAU would create in the NSIC an effective mechanism for coordination with critical stakeholders through mandated wagering industry and sport stakeholder engagement.

RECOMMENDATION 45

That a Strategic Analysis Unit be established as part of the National Sports Integrity Commission, and be responsible for conducting open-source threat identification and analysis, including: monitoring of illegal offshore wagering market framing; conducting strategic and threat analyses and providing advice (including in relation to Sports Integrity Threat Overviews); and determining a schedule of authorised wagering contingencies.

A combination of the proposed JIIU, SAU, and SBIU would provide a potent national sports integrity monitoring, investigations and intelligence capability to detect, collate, assess and disseminate sports integrity threat information to stakeholders; refer specific matters for criminal investigation by other law-enforcement agencies or code of conduct breaches to NSOs; and ensure an ongoing sports integrity strategic assessment and advisory capability.

321 Open-source material is publicly available material such as the internet, traditional mass media (television, newspaper and radio), specialised journals, conference proceedings, photos and geospatial information (e.g. maps and commercial imagery products).

Together, the capability of the SBIU, JIUU and SAU provides a ready, central repository for the ingestion of sports integrity information from a wide range of sources including:

- the IOC Integrity Betting Intelligence System (IBIS – already accessed by NISU)
- Macolin Convention National Platform partners, in particular the ‘Copenhagen Group’
- ISOs, in particular dedicated ISF Integrity Units such as the International Association of Athletics Federations Independent Athletics Integrity Unit, Tennis Integrity Unit, International Cricket Council’s Anti-Corruption Unit
- NSOs (and SSOs)
- licensed SWSPs in Australia, providing in particular: SWSP-generated alerts, specific betting data on request, and bulk betting data on request
- state and territory gambling regulators
- Commonwealth, state and territory law-enforcement agencies including ASADA, ACIC, ACMA and Department of Home Affairs
- through the protected disclosure (‘whistleblower’) framework (below).

7.4 ROLE OF THE AUSTRALIAN CRIMINAL INTELLIGENCE COMMISSION

We acknowledge the world-leading efforts of the ACIC working in close collaboration with the NISU with respect to the conduct of sports integrity threat assessments, and in defining the integrity threat associated with sports wagering markets, in particular that arise from domestic links to unregulated offshore WSPs.

While we consider that the current SBIU facility within the ACIC would be best housed in the NSIC, we acknowledge that the NSIC will not have the advanced, intrusive collection capability of the ACIC, and that the ACIC will have an important ongoing role in collecting intelligence about criminal exploitation and infiltration of the sports (and racing) sector.

It is therefore imperative the NSIC work closely and collaboratively with the ACIC to ensure an optimal national capability for protection of sports from organised crime, and that the advanced sports integrity expertise and collection capability within the ACIC be maintained.

RECOMMENDATION 46

That the National Sports Integrity Commission (NSIC) work closely with the Australian Criminal Intelligence Commission (ACIC), and that the ACIC be resourced to maintain a standing, advanced sports criminal intelligence capability to: enable enhanced analysis and exploitation of NSIC data and intelligence products; support the NSIC through advanced intelligence capabilities; and proactively develop intelligence on serious organised criminality linked to sport but outside the remit of the NSIC (e.g. money laundering through Wagering Service Providers).

7.5 PROTECTED DISCLOSURE (WHISTLEBLOWER) FRAMEWORK

We heard from a large number of stakeholders³²² that despite the efforts of NSOs to enable and encourage athletes and athlete support personnel to report incidents of actual or suspected corruption (including doping and match-fixing), there was a general reluctance to do so, with athletes and officials of the view that whistleblowing can ‘ruin careers’.

In part, the problem with the current model is that there is no independent body established to receive complaints – athletes and support persons are expected to report to sports administrators or agencies outsourced by sport administrators. It is easy to imagine how current circumstances might deter an athlete, official or support person from ‘whistleblowing’.

In our view, the NSIC should provide an independent whistleblower service to athletes and support persons, including:

- a dedicated hotline for receiving reports from athletes and support personnel about integrity threats
- a regulatory protected disclosure regime – anticipated to be necessary in the event that a disclosure led to eventual prosecution/sanction, and the whistleblower was to provide evidence (losing anonymity).³²³

322 Australian Athletes’ Alliance, *Submission 25*; Jack Anderson (incoming Professor of Sports Law at the University of Melbourne) (met on 24 August 2017); Hayden Opie AM (CAS member, former Professor of Sport Law at the University of Melbourne) (met on 24 August 2017); Australian Sports Anti-Doping Authority, *Submission 10*; Dr Susan White (chair of the Australian Sports Drug Medical Advisory Committee) (met on 18 August 2017).

323 This would in part also assist in meeting obligations under Article 21 of the Macolin Convention regarding protection measures, though the Convention only applies in respect of offences established pursuant to Articles 15 and 17 which relate to match fixing and aiding and abetting match-fixing activity (and not doping).

AAA identified the following elements of an effective whistleblower framework, which we support:

- **Protection against retaliation:** Governing bodies, clubs and leagues should bear the onus of justifying why a whistleblower was not offered a contract extension or offered re-employment at a new entity or had any other negative result that could be a reprisal for whistleblowing. There should be clearly articulated penalties for reprisals. Governing bodies should also bear the cost, such as legal costs, of protecting athlete whistle-blowers.
- **Independent reporting processes with clear lines of report:** whistleblower policies and procedures must be easily accessible and detailed. The best reporting procedure is one, like the AFL's, in which allegations may be reported anonymously to a hotline run by an independent organisation.
- **Incentives:** best practice systems include overtly incentivising whistle-blowers to come forward in exchange for specific benefits, most relevantly, a discounted penalty for their own wrongdoing or a financial reward for information leading to prosecution (particularly in wrongdoing, such as match-fixing, with financial dimensions). Incentives must be clearly articulated and applied in an equitable manner.³²⁴

RECOMMENDATION 47

That a whistleblower scheme encompassing all sports integrity issues, and a related source protection framework, be administered by the National Sports Integrity Commission.

7.6 ILLICIT DRUGS

Currently, some team sports at the elite level run illicit drug testing programs for code of conduct purposes. This is in addition to testing for substances prohibited from sport through ASADA or other agencies. This testing is done by the sports under the terms of their integrity policies agreed through collective bargaining.

ASADA does not conduct testing for illicit drugs other than those which are also substances prohibited from sport. Nor does ASADA have access to data on test results, which are subject to confidentiality agreements between the NSO and athlete.

We consider that this represents a significant missed opportunity for ASADA and law enforcement, and prospectively the NSIC, given the strong connection between illicit drugs, substances prohibited from sport, organised crime and other sports integrity threats.

We considered whether ASADA might provide illicit drug testing to NSOs as a user-pays service following implementation of arrangements that would enable ASADA to be competitive in the user-pays market. However, we have formed the view that this may not be as effective as initially thought. Rather, the preferred approach would be for the NSIC to work closely with major professional sports regarding illicit drugs policies, and seek access to results of sample analysis for the purposes of their integration with intelligence and analysis capabilities.

RECOMMENDATION 48

That the National Sports Integrity Commission work with major professional sports regarding illicit drugs policies with a view to seeking access to results of sample analysis for the purposes of their integration with intelligence and analysis capabilities.

8. POLICY AND PROGRAM DELIVERY (INCLUDING OUTREACH, EDUCATION AND DEVELOPMENT)

We recognise that Government sports integrity-related policy development, implementation and administration is currently a large proportion of the work of the NISU. These functions would be best incorporated within the NSIC to ensure close collaboration with the other NSIC elements and promote informed, agile and responsive sports integrity policy development, implementation and administration.

By the same logic, the Sports Integrity Program funding administered by the NISU should also fall under the policy and program delivery functions of the NSIC.

8.1 OUTREACH AND STAKEHOLDER ENGAGEMENT

The outreach function of the NSIC will necessarily involve amalgamating activities that are currently the remit of other organisations in the Commonwealth system, including NISU, ASADA and ASC, in order to bring currently disparate elements of the sports integrity framework together. By doing so, the NSIC will become a single point of contact for athletes, sporting organisations, SWSPs and other stakeholders for matters relating to sports integrity.

Stakeholder (including government) engagement and support will be critical to the successful establishment of the NSIC and its ability to effectively execute its integrity functions.³²⁵ Key stakeholders include:

- sports controlling bodies/national sporting organisations
- NISU, ASADA, ASC, Office for Sport
- Department of Social Services and ACMA
- Commonwealth, state and territory law-enforcement agencies, criminal intelligence commissions and criminal prosecution services
- state and territory gambling regulators
- sports wagering industry members.

We recognise that valuable sports integrity stakeholder engagement and outreach programs already exist, including the Australian Sports Integrity Network, Jurisdictional Sports Integrity Network (including the conduct of 'sports integrity roadshows' in the states and territories), betting regulators forum, ASADA and ASC outreach programs, and the Victoria Police sports integrity symposia, among many other initiatives. Likewise, direct support for smaller sports requiring assistance to build integrity capability is provided for within existing policy frameworks, and this has been exercised to good effect with some sports.

The establishment of the NSIC provides an opportunity to consolidate, expand and promote these outreach efforts, and support consultative policy development and cooperative program implementation, through provision of a dedicated liaison and secretariat function.

However, in our view, there are two 'gaps' in the coverage of existing sports integrity stakeholder engagement, both of which will be critical areas of focus as the NSIC capability is developed.

First, sports integrity collaboration and expertise needs to be more effectively promoted across Australian law-enforcement agencies. This would be effectively managed by setting up a specific law-enforcement sports integrity network. The formation of the JIU would be instrumental in supporting such a network and promoting sports integrity awareness and expertise across law enforcement. Concomitantly, enhancing law-enforcement agencies' understanding of sports integrity issues will assist JIU engagement

325 The Panel consulted with the UK Gambling Commission on 26 September 2017; Australian Athletes' Alliance, *Submission 25*.

with jurisdictional agencies, and two-way flow of information.

Second, a sports wagering community of expertise should be established, bringing together SCBs/ NSOs, the SBIU, law-enforcement agencies, SWSPs and betting regulators. This group would fulfil a function similar to the Sports Betting Integrity Forum (SBIF) overseen by the UKGC, building on the existing COMPPS wagering integrity group and existing SBIU SCB outreach and consultation function.

8.2 EDUCATION AND TRAINING

As with existing outreach and development capabilities, we recognise that many quality sports integrity education and training programs and opportunities developed by various integrity bodies, and have been built into NSO integrity programs and, in some instances, have received wide uptake.

However, the establishment of the NSIC would provide for the consolidation, coordination, development and delivery of education and training functions at a central point.³²⁶

8.3 DEVELOPMENT

Bodies with responsibilities for organising sport are holders of public trust. They are in many cases recipients of substantial public funding, which carries a responsibility to uphold the highest standards of integrity, creating a trustworthy, safe and inclusive environment for participants and those who invest or donate time and money.

Good governance helps organisations to achieve these outcomes by driving organisational excellence and integrity.³²⁷ Governance in Australian sport is already at a high level, particularly due to the collaboration between NSOs and the ASC in this area.

The fundamental interplay between governance and integrity is a factor relevant to considerations

of national sports integrity roles and structures. General governance issues for sport have, for sensible reasons and with good outcomes, been within the remit of the ASC for some time. Obligations of sports for integrity and other measures are enacted through the operation of sport investment agreements.

However, primarily due to this ASC function and past practice, there has been some ongoing overlap and lack of clarity of responsibility for sports integrity issues between agencies, particularly the ASC and NISU. Accordingly, while NISU has adopted, inter alia, primary responsibility for anti-doping policy matters, integrity threat assessment, match-fixing and betting-related corruption policy matters and related outreach programs, ASC has, for example, maintained primary responsibility for member protection matters; it hosts the PBTR collaboration, and has issued sports integrity guidelines to the sport sector. Some other matters, such as development of illicit drugs in sport policies and education programs, have been shared initiatives.

We see the establishment of the NSIC as an opportunity to redefine and concentrate responsibility for all sports integrity matters within the one body; ensuring a single, comprehensive capacity to address issues across the integrity spectrum. This will, in our view, also assist in focusing efforts on those smaller and emerging sporting organisations that require the most assistance in this area.

Improving sports integrity organisational capacity will include the development and implementation of policies including for doping, match-fixing and corruption, member protection, and other integrity issues, including new and emerging issues.³²⁸ This is consistent with Article 7 of the Macolin Convention, regarding sports organisations and competition organisers, particularly paragraph 2, on the adoption and implementation of appropriate integrity measures.³²⁹

326 Australian Athletes' Alliance, *Submission 25* and the Coalition of Major Professional and Participations Sports, *Submission 20* had indicated that this would be of assistance – training may be available, but there is confusion about which is the best, which is accredited, which is most up to date, and where they should be getting it from.

327 UK Sport, 'A code for good governance', accessed 10 January 2018, <<http://www.uk sport.gov.uk/resources/governance-code>>.

328 Protection of children, health and safety, harassment, discrimination, abuse etc.

329 Council of Europe Convention on the Manipulation of Sports Competitions, opened for signature 18 September 2014, CETS No. 215.

Sports should also continue to be assisted with organisational governance issues; however, in our view, this should remain the remit of the ASC, consistent with what we outline below with regard to the ASC retaining direct funding responsibility for sporting organisations.

Through building organisational capacity of sporting organisations, the NSIC will also have a role in supporting Australia's efforts in meeting the UN Sustainable Development Goals (particularly SDG16³³⁰) – a function that will also sit well with the NSIC's international work program.

8.4 ADMINISTERING RECOGNITION AGREEMENTS AND SPORT INVESTMENT AGREEMENTS

Responsibility for negotiating and formalising RAs and SIAs with NSOs – currently administered by the ASC – could possibly be allocated to the NSIC, though by doing so a range of measures outside of the integrity locus, which properly reside with the ASC, would be engaged.

A system whereby the NSIC's assurance regarding a sports' integrity protection capability is *required before investment agreements being executed* is a preferable alternative. While this process already occurs in part through ongoing NISU/ASC/ASADA collaboration, the formation of the NSIC gives an opportunity to reinforce this arrangement. These arrangements would also enable Australia to meet its obligations under Article 8 of the Macolin Convention, on measures regarding the financing of sports organisations.³³¹

8.5 MEMBER PROTECTION

While many issues appropriately fall within the sports integrity continuum, optimising member protection within sport and safety issues is a particular priority following the findings of the Royal Commission into Institutional Responses to Child Sexual Abuse. To date, member protection and safety has fallen within the ambit of the ASC.

The establishment of the NSIC will allow, through the JIUU and close ties with other Commonwealth, state and territory agencies, the operation of an assessment and referral model – triaging matters of varying severity or significance to sports, law enforcement agencies, or specialised agencies (including the child protection agencies, the Australian Human Rights Commission or other state and territory agencies regarding discrimination).

RECOMMENDATION 49

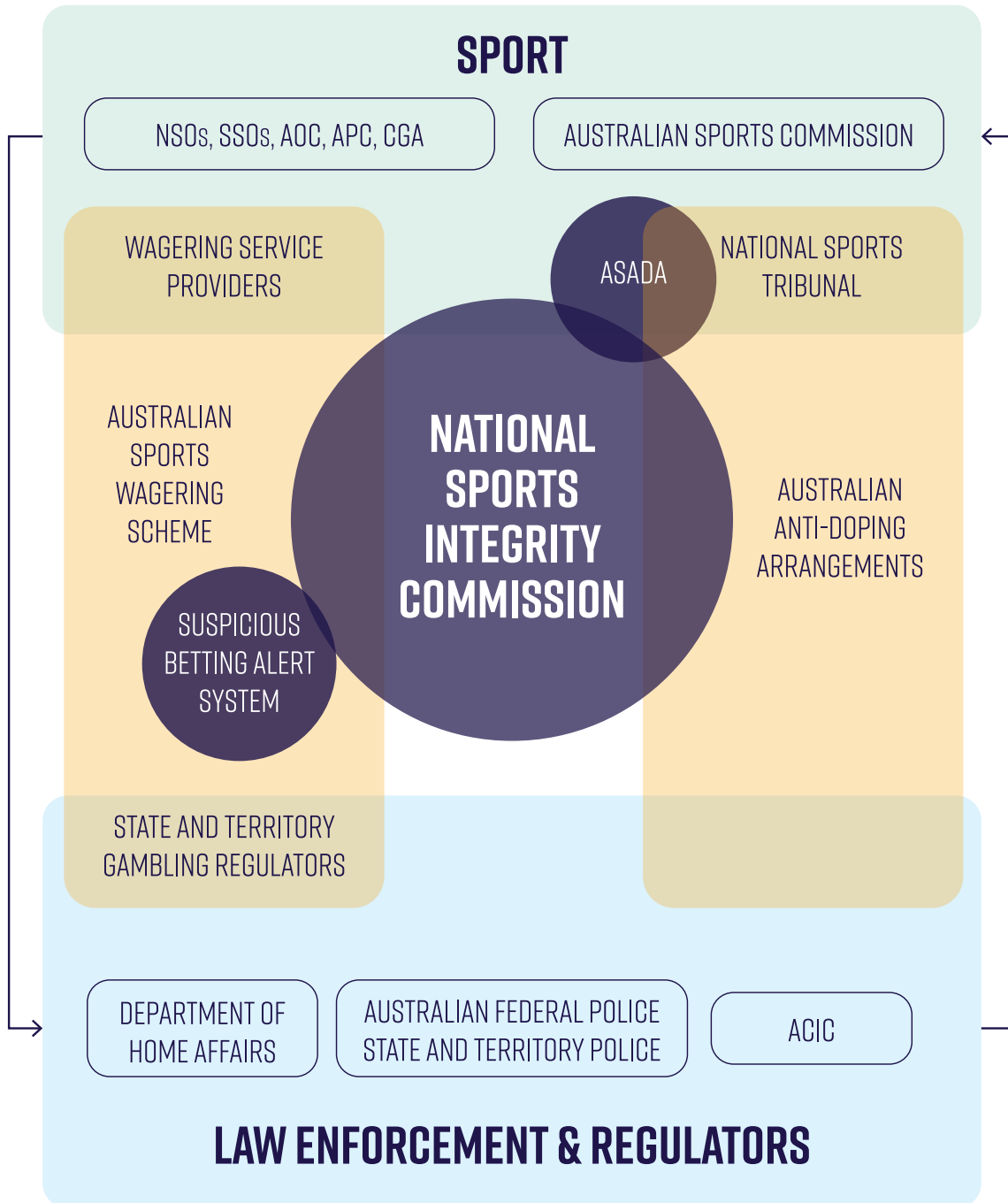
That consideration be given to the National Sports Integrity Commission becoming responsible for centrally coordinating sports integrity policy functions previously executed by a number of different organisations including the Australian Sports Commission, Good Sports Program (through the Alcohol and Drug Foundation) and National Integrity of Sport Unit.

330 #Envision2030 Goal 16: 'Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels', United Nations, accessed 20 January 2018, <<https://www.un.org/development/desa/disabilities/envision2030-goal16.html>>.

331 Council of Europe Convention on the Manipulation of Sports Competitions, opened for signature 18 September 2014, CETS No. 215.

Figure 8: Proposed National Sports Integrity Structural Arrangements

REPRESENTATION OF PROPOSED NATIONAL SPORTS INTEGRITY STRUCTURAL ARRANGEMENTS



RECOMMENDATION 50

That the National Sports Integrity Commission be a single point of contact for athletes, sporting organisations, Sports Wagering Service Providers, and other stakeholders for matters relating to sports integrity.

RECOMMENDATION 51

That the National Sports Integrity Commission provide direct assistance to small and emerging sports in Australia that lack capacity to deal with integrity issues.

RECOMMENDATION 52

That a single, easily identifiable education and outreach platform be established within the National Sports Integrity Commission (NSIC), dedicated to developing and coordinating education, training and outreach resources and programs in collaboration with the Australian Sports Anti-Doping Authority, Australian Sports Commission, sports (particularly Coalition of Major Professional and Participation Sports integrity units) and athletes, including athletes' associations. Administration of existing initiatives and forums, including the Australian Sports Integrity Network, Jurisdictional Sports Integrity Network, Betting Regulators Forum and Play by the Rules, should be incorporated into the NSIC education and outreach platform.

8.6 INSTITUTIONAL INTEGRATION OF ASADA

The precise remit of the NSIC in respect of anti-doping matters may vary, ranging from assuming the policy development and coordination role currently undertaken by NISU, to a full restructuring and incorporation of the functions of ASADA within the NSIC structure. We do not, at this stage, propose a restructure that would rebase the ASADA functions within the NSIC structure, as we consider it important to preserve ASADA's operational independence and investigative capacity.

Regardless, it will be critical that a strong integration with ASADA be built into the NSIC framework/structure to enable more effective information sharing, collaboration and joint investigation in recognition of the close interconnectivity of the range of matters within the sports integrity threat continuum.

The secondment of ASADA officers into the JIIU, is one element designed to ensure such integration.

8.7 INTERNATIONAL ENGAGEMENT INCLUDING THE UNESCO AND MACOLIN CONVENTIONS

It is our view that the NSIC should be Australia's international focal point for sports integrity issues, and generally responsible for international engagement in that respect.

Such engagement, from the perspective of the NSIC, will broadly fall within two categories:

- international cooperation and engagement in investigation and law enforcement
- international engagement for the purposes of Convention-based administration.

The NSIC, as the lead agency for sports integrity matters in Australia and the National Platform for the purposes of the Macolin Convention, would undertake international engagement on behalf of the Australian Government, specifically with respect to the Macolin Convention, but also in a broader sense as necessary.

The NSIC should also have policy responsibility for international engagement with regard to the UNESCO International Convention against Doping in Sport, and the Code.

APPENDIX

A

WAGERING ON AUSTRALIAN SPORT, AND CRIMINALISATION OF MANIPULATION OF SPORTS COMPETITIONS AND RELATED CORRUPTION

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WAGERING ON AUSTRALIAN SPORT

This appendix summarises some of the main aspects of sports wagering. It provides background to some elements of the report (particularly Chapters 2 and 3), with a focus on issues that impact, or have the potential to impact, the integrity of sport in Australia.

I. GROWTH OF SPORTS WAGERING, TURNOVER AND GOVERNMENT REVENUE

1.1 PREVALENCE OF SPORTS WAGERING

Wagering on sport in Australia represents a small proportion of overall gambling with Australian entities, at about 4.8% of all gambling turnover (see below).³³² However, sports wagering is the only form of gambling for which participation (prevalence) rates have increased over the last decade.³³³ In 2014, it was estimated that about 13% of all adult Australians had gambled on sport in that year.³³⁴

This growth in sports wagering has been accompanied, and possibly caused in part, by pervasive advertising of sports betting services and general and targeted advertising through social media, and has resulted in what has been described as the 'gambification' or commercialisation of sports.³³⁵

1.2 SPORTS WAGERING TURNOVER

Turnover for all gambling in Australia in 2015–16 has been estimated at \$204.4 billion; increasing from \$192 billion in 2014–15.³³⁶ Turnover refers to the total amount gambled or wagered by consumers of gambling services (in contrast to gambling expenditure, which refers to the net amount lost by consumers of gambling services). For this report, turnover is a more useful measure of the overall market in Australia, and in many cases is the measure on which taxes and product fees are based.

Table 3 shows a breakdown of gambling turnover in 2014–15 and 2015–16.³³⁷ Of the \$204.4 billion in total gambling turnover in 2015–16, \$28.1 billion (or 13.7%) was gambled in the wagering sector (including sports wagering and wagering on traditional races). While this represents a comparatively small proportion of overall gambling turnover,³³⁸ wagering has the highest growth of any sector, with expenditure having increased by almost 30% since 2007.

Much of this growth in the wagering sector is attributable to the increasing popularity of sports wagering. Table 3 shows that turnover attributable to sports wagering (as a subset of overall wagering) is growing fast, increasing by 35% from 2014–15 to 2015–16.

Despite this growth, sports wagering remains a comparatively minor part of the overall gambling market, contributing only about 4.8% of total gambling turnover in 2015–16. The increase in sports betting turnover represented only \$1.5 billion in annual turnover, and about 0.8% of total gambling turnover in 2014–15.

332 Queensland Government Statistician's Office, Queensland Treasury, Australian Gambling Statistics, 33rd edition (2015–16 data).

333 Gainsbury, S, et al., 2014, also as reported in Australasian Gaming Council, 2016, A guide to Australasia's gambling industries 2015–16.

334 Gainsbury, S, Russell, A, Hing, N, Wood, R, Lubman, D & Blaszczynski, A, 2014, 'The prevalence and determinants of problem gambling in Australia: Assessing the impact of interactive gambling and new technologies', *Psychology of Addictive Behaviors*.

335 McMullan, J & Miller, D, 2008, 'All in! The commercial advertising of offshore gambling on television', *Journal of Gambling*, Issue 22.

336 Queensland Government Statistician's Office, Queensland Treasury

337 Ibid

338 Compared with turnover on interactive gaming machines (poker machines), which alone accounted for \$135.7 billion over the same period.

Table 3: Gambling turnover in Australia 2014–15 and 2015–16

Gambling type	2014–15 turnover (AU\$ billion)	2015–16 turnover (AU\$ billion)	Percentage change
Wagering	24.9	28.1	
• Sports betting	7.2	9.7	+35.1
• Racing	17.7	18.4	+3.4
Gaming	167.1	176.3	+5.5
Total	192.0	204.4	+6.4%

Source: Queensland Government Statistician's Office, Queensland Treasury, 'Australian Gambling Statistics', 33rd edition.

1.3 GOVERNMENT LEVIES

Government revenue from gambling is derived from state and territory gambling taxes and licensing fees, as well as other non-gambling specific state and territory taxes. Commonwealth revenue streams include GST, company tax and fringe benefits tax.³³⁹

Levies on gambling represent an important element of state and territory revenue. Gambling tax collected across Australia in 2015–16 was estimated at \$6.0 billion,³⁴⁰ of which about \$36 million was attributable to sports wagering (note: consistent comparison across jurisdictions cannot be made because Northern Territory revenue is reported according to the licensing arrangements (requiring taxes be paid to a capped amount) and this includes both sport and racing wagering).³⁴¹

In most jurisdictions, particular proportions of government gambling revenue are hypothecated for spending on important community programs, including those which provide assistance to problem gamblers.³⁴²

In relation to sports wagering, each state and territory applies a different model of taxation to wagering service providers (WSPs) licensed in their jurisdiction, variously based on turnover, gross profit, licensee commission or player loss.³⁴³

In 2017, the South Australian Government introduced a new tax – the Betting Operations Tax – which applies a point-of-consumption levy of 15% on the net wagering revenue on all bets placed in South Australia with Australian licensed WSPs, over an annual threshold of \$150,000.³⁴⁴

The Queensland and Western Australian governments have announced planned implementation of similar taxation arrangements, while the New South Wales and Victorian governments have announced plans to investigate similar levies and work with the Australian Government to develop a consistent national approach.³⁴⁵

The consideration (and implementation, in South Australia) of point-of-consumption taxation on wagering has been described as a 'reasonable reaction to a growing problem'³⁴⁶ – an attempt to claw back some of the gambling tax revenue that is lost by other states to the Northern Territory, due to the concentration of 'corporate' online bookmakers located there, attracted by a favourable licensing regime.

339 Australasian Gaming Council, 2016, A Guide to Australasia's Gambling Industries 2015–16.

340 Queensland Government Statistician's Office, Queensland Treasury, 'Australian Gambling Statistics', 33rd edition.

341 Ibid.

342 Australasian Gaming Council, 2016, op. cit.

343 Ibid.

344 Revenue SA, 2017, Guide to Betting Operations Tax, Government of South Australia, <https://www.revenuesa.sa.gov.au/taxes-and-duties/land-tax/guides-to-legislation/G2L_BOT_2017-18.pdf>, accessed 25 October 2017.

345 Australian Financial Review, 'NSW and Victoria push to claim online gambling tax', 25 June 2017, <<http://www.afr.com/business/gambling/nsw-and-victoria-push-to-claim-online-gambling-tax-20170625-gwy1k9>>, accessed 25 October 2017.

346 Livingstone, C, 'South Australia's gambling tax highlights the regulatory mess of online betting', *The Conversation*, 10 February 2017, <<http://theconversation.com/south-australias-gambling-tax-highlights-the-regulatory-mess-of-online-betting-72495>>, accessed 25 October 2017.

2. THE NATURE OF WAGERING SERVICES AND WAGERING SERVICE PROVIDERS

2.1 TYPES OF WAGERING SERVICE PROVIDER

In Australia, wagering services for both sports and racing are provided by state and territory totalisators (or totalisator agency boards – TABs), on-course bookmakers and corporate bookmakers (including those providing betting exchanges

and fantasy sport competitions). Together, for this report we refer to these as 'wagering service providers' (WSPs).

The 2010 Productivity Commission report 'Gambling'³⁴⁷ provides a very useful summary of WSPs operating in the Australian market.³⁴⁸ The following is an abridged version of that summary.

BOX I – SUMMARY OF REGULATED WAGERING SERVICES AND PROVIDERS IN AUSTRALIA

On-course WSPs: individuals licensed by the relevant state or territory racing authority to operate at racing venues. They offer fixed odds, and operate face-to-face as well as over the phone and internet, while on course. Some jurisdictions also provide for specific licences allowing the provision of these services off course.

Corporate WSPs: fully incorporated WSPs which operate over the phone and internet, and are often listed companies or subsidiaries of listed companies. Corporate WSPs tend to have fewer restrictions than on-course equivalents (for example, they may operate 24 hours a day) and offer a wider range of wagering products. There are 28 corporates in Australia at the time of writing: 22 in the Northern Territory and six in New South Wales.

Totalisators: operated by totalisator agency boards (TABs), totalisators do not offer fixed-odds bets. All bets are placed in a pool, with the winning bets sharing this pool (minus a percentage taken by the operator). For this reason, the final dividend is continuously updated before the race as betting takes place and is not finalised until wagering closes.

TABs: Totalisator agency boards or TABs in common usage – the term 'TAB' refers to the bodies in each state and territory that are exclusively licensed to operate totalisators and to offer off-course retail (in venue) wagering services as well as non-exclusive on-course, phone and internet wagering services. TABs also provide retail fixed-price betting on course, and a range of other wagering products including, for example, fixed-odds online sports products in competition with corporate WSPs. At the moment, the TAB market is comprised of Tabcorp (in the Australian Capital Territory, New South Wales and Victoria); UBET (in the Northern Territory, Queensland, and South Australia); and TABtouch (in Western Australia). State-owned TABs have been privatised over recent decades, except for the Western Australian Government-owned TABtouch. In late 2017, Tabcorp and Tatts (which own UBET) merged, meaning that the Western Australian TABtouch is the only totalisator in Australia operating outside this conglomerate.

Betting exchanges: similar to a stock exchange, a betting exchange is essentially a marketplace for consumers to trade wagers at different prices and quantities. A betting exchange matches punters who are seeking to wager that a particular outcome will occur (i.e. horse X will win) with others who are seeking to place opposing wagers (i.e. horse X will not win).

347 Productivity Commission, *Gambling*, Commonwealth of Australia, Canberra, 2010.

348 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p. 100.

Leaving aside on-course WSPs (racing), the market is split between state and territory based TABs on the one hand, which have a monopoly on land-based retail (shop front) wagering services in the jurisdiction in which they are licensed,³⁴⁹ and corporate WSPs, which are licensed in one jurisdiction but operate in the online environment and offer wagering services across the country.

At present, most corporate WSPs are licensed in the Northern Territory.

2.2 TYPES OF SPORTS WAGER

'Wager' is a broad term, which describes a bet on the outcome of a sporting, racing or other event, or elements within an event. For this report, 'sports wagering' refers to wagering activity on local, national or international sporting activities, whether conducted on-course or off-course, in person, by telephone or via the internet, and all types of wager are collectively referred to as 'contingencies'.

REGULAR WAGERING

'Regular wagering' collectively describes those types of wagers that are, and have been for some time, typical of the sports wagering market. These include wagers on:

- the event winner (often also referred to as the 'head-to-head outcome')
- the 'spread', where a customer bets on the extent to which one side will win based on a predicted 'spread' of points determined by the WSP
- 'totals', where the consumer bets on the total score of both teams being over or under a specified amount.

These types of wagers are governed by state and territory regulation and through agreements between WSPs and sporting organisations (discussed in more detail below).

SPOT WAGERING

For this report, we have collectively referred to wagers made on elements within an event as 'spot wagers' (which are also referred to as proposition (or 'prop') wagers, micro wagers or exotic wagers). Spot wagering involves placing wagers on elements of or occurrences *within* a particular event or match, such as the identity of the first goal scorer, no-balls in cricket, points won by a player or total penalties awarded. These may pertain to a certain team or to a certain player, or to certain time periods (e.g.

within the second quarter of an AFL match, or the third over of the second innings in a cricket match).

Even within the approved contingencies in Australian regulated markets, the number of bet types available for a sport, particularly the larger professional sports, can typically number more than 200. In unregulated markets, the number and type of propositions offered is unlimited and frequently exceeds the regulated offering substantially.

IN-PLAY WAGERING

In addition to being able to place wagers before the start of an event, another common type of sports wager is that which is placed 'in-play' or 'in the run' – wagering on an outcome *after* the commencement of the event.

In-play wagering conducted online ('online in-play') is prohibited under the Commonwealth *Interactive Gambling Act 2001*. However, in-play bets are able to be placed legally by phone call or in person where in-venue facilities exist under the relevant jurisdiction's retail wagering framework.

OTHER TYPES OF WAGERING

Additional variations of sports wagering are also licensed in Australia and present varying levels of threat to sports integrity. Analysis of betting patterns in markets associated with these events is not, in some cases, the subject of any formal collation and analysis due to the emerging nature of the organisations and associated wagering markets.

Examples include:

- fantasy sports – betting on a self-generated team and their respective real-world performances against similarly selected opponent teams
- spread betting – betting on team or individual performances where exceeding the WSP-assessed spread of points increases the win or loss by the stake per point
- synthetic lotteries based on sports teams³⁵⁰
- virtual sports betting – betting on wholly synthetic sports or racing contests with fixed payouts
- peer-to-peer prediction market platforms that allow users to generate any desired contingency.

This is not a comprehensive list of current wagering options, and the field is rapidly expanding.

349 As well as an online presence in most cases in direct competition with the corporates.

350 See examples at Magpie millions, <<https://www.magpiemillions.com.au/play-now>>, accessed 18 December 2017 and Brumbies millions, <<https://www.brumbiesmillions.com.au/play-now>>, accessed 18 December 2017.

Different forms of gambling have differing status under the laws of international jurisdictions. Australian companies offering fantasy sports betting, for example, accept the need to adhere to the requirements of their status as licensed WSPs. Internationally, the position of the relevant legislature determines whether fantasy sports are considered a game of skill with prizes or gambling on a sport.

2.3 ONLINE WAGERING

Put simply, 'online wagering' refers to wagering activity conducted using the internet on a computer, mobile digital device, smart phone or tablet, or smart television.

According to the Australian Government Department of Social Services, online gambling is the fastest growing gambling segment in Australia, increasing at approximately 15% a year on average since 2004, with more than AU\$1.4 billion gambled in the regulated onshore online market per annum in recent years.³⁵¹ The growth in the online gambling market has been attributed to the better prices/returns that many online platforms can offer, greater variety and volume of wagering products, and the comfort and convenience of having 24-hour mobile access to wagering services.³⁵²

THE EXPANSION OF ONLINE GAMBLING AND THE INCREASE IN SPORTS WAGERING

There is a strong link between the growth of the online gambling market and the ongoing increase in the sports wagering market. Numerous studies show that sports wagering represents a disproportionately high share of the online gambling market when compared with overall gambling. In the recent Review of the Impact of Illegal Offshore Wagering (O'Farrell Review), it was noted that sports wagering comprised 53% of the international online gambling market.³⁵³

In Australia, the growth in popularity of online sports wagering has been attributed, at least in part, to pervasive advertising during and around sporting matches. Sporting events have been associated with online wagering through sponsorship deals as well as a wide range of other media and promotional techniques.³⁵⁴

There has long been community concern regarding gambling advertising, demonstrated by the volume of literature that has been produced on the subject, including a number of Australian Government parliamentary inquiries.³⁵⁵ In 2017, in response to widespread concern regarding the prominence of wagering advertising during televised sporting matches, the Australian Government proposed a range of restrictions, to be introduced via the adoption of amended industry codes of practice under the regulation of the Australian Communications and Media Authority (ACMA).³⁵⁶

Despite these restrictions, WSP spending on advertising is still likely to remain significant in a highly competitive environment. The amount of money spent on gambling advertising rose from \$91 million in 2011 to \$236 million in 2015. This 160% increase has mainly been for sports wagering advertising.³⁵⁷

Responsible Wagering Australia emphasised the convenience offered to the consumer through online wagering³⁵⁸ – that the consumer is now able to download dozens of smart-phone applications and quickly compare competing wagering products, for an increasing array of Australian and international sporting events.

These factors appear to be shifting consumers from land-based wagering to a more convenient online format, and creating new consumers who may have never engaged in land-based wagering.

351 Department of Social Services, 'Gambling', <<https://www.dss.gov.au/communities-and-vulnerable-people/programmes-services/gambling>> 28 November 2017. This is 'expenditure'; therefore, it represents consumer net loss rather than turnover.

352 Responsible Wagering Australia consultation with Review Panel on 24 August 2017.

353 Department of Social Services, 'Review of Illegal Offshore Wagering' (lead reviewer, the Hon. Barry O'Farrell, 18 December 2015) (data sourced from H2 Gambling Capital, 2013).

354 Joint Select Committee on Gambling Reform (JSCGR), 2011, Interactive and online gambling and gambling advertising, Commonwealth of Australia, Canberra.

355 For example: Parliament of Australia, Inquiry into the advertising and promotion of gambling services in sport.

356 Australian Communications and Media Authority, 'Odds and betting ads in live sport broadcasts – the rules', <<http://acma.gov.au/theACMA/odds-and-betting-ads-in-live-sport-the-new-rules>>, accessed 10 January 2018.

357 According to Standard Media Index figures in Hickman, A & Bennett, L, 'Gambling ads: place your bets', *AdNews*, 1 July 2016, <<http://www.adnews.com.au/news/gambling-ads-place-your-bets>>.

358 RWA made these comments to the Panel during a stakeholder consultation in the context of discussing the convenience with which consumers might access unregulated offshore operators via mobile phone.

2.4 REGULATED ONSHORE ONLINE SPORTS WAGERING

In this report, the term ‘regulated online sports wagering service providers’ refers to those WSPs licensed in an Australian state or territory offering online services, and ‘regulated online sports wagering’ refers to the services provided by them.

In Australia, there are at the time of writing 129 WSPs licensed to provide online services,³⁵⁹ though of these 90 are on-course bookmakers, and many of these offer markets on racing only. Of the remaining 39 online operators (comprised of corporate bookmakers, TABs, and betting exchanges), 26 are corporate sports bookmakers and betting exchange operators licensed in the Northern Territory (although only 22 licenses have been issued by the Northern Territory Racing Commission – some WSPs operate under a license issued to another WSP, who may be a parent corporation)³⁶⁰

Tabcorp, UBET and TABtouch, which retain monopoly markets over land-based retail wagering service provision in the jurisdictions in which they operate, are also licensed in each relevant jurisdiction to provide online wagering services, including sports wagering products. Whereas traditionally a WSP would offer markets to consumers in the state where it is licensed, now, almost all operators are providing services across borders, domestically and internationally.

A 2008 Australian High Court decision³⁶¹ served to remove restrictions on bookmakers licensed in one jurisdiction from advertising in another. This change prompted the entry of corporate WSPs into the Australian sports betting market, many licensed in the Northern Territory and offering wagering services across Australia.

As discussed in further detail below, while the Commonwealth does not currently operate a licensing regime for any aspect of the wagering market, the *Interactive Gambling Act 2001* (IGA) provides for overarching Commonwealth regulatory oversight of online gambling – with states and territories retaining independent control for licensing and application of levies. The IGA prohibits all online gambling, with the exception of wagering through Australian licensed WSPs (excluding in-play betting) and lottery activities.

2.5 ILLEGAL OFFSHORE ONLINE WAGERING

For current purposes, ‘illegal offshore online wagering’ refers to any wagering service provided to a consumer in Australia by a WSP not licensed in an Australian state or territory.³⁶² The IGA does not, however, criminalise the accessing of offshore online gambling platforms by consumers in Australia.

A distinction is drawn between illegal offshore online wagering (as a creature of Australian statute) and unregulated or partially regulated wagering platforms. Under the IGA, it is not permissible for any wagering platform without an Australian licence to offer wagering services to a consumer in Australia, whether that wagering platform is regulated, or wholly or partially unregulated in the jurisdiction in which it is based. Many offshore WSPs are fully licensed and operate lawfully in foreign jurisdictions, without offering, unlawfully, any wagering services to Australians.

However, over recent years the number of online wagering platforms has increased significantly, with 10,000 estimated across the world as far back as 2006, of which many operate without holding a licence in any jurisdiction.³⁶³ These platforms attract an estimated 80% of overall bets in the global sport betting market,³⁶⁴ and are usually based in tax havens, including Alderney, Gibraltar, the Isle of Man, Malta, the Cagayan province in the Philippines, the Kahnawake territory in the Quebec region, Antigua and Barbuda, Costa Rica and Curaçao.³⁶⁵

In addition to these options there is an emerging class of online platforms that provide for entirely unregulated gambling interactions between individuals. These ‘peer-to-peer’ platforms allow for user-generated, decentralised prediction markets which operate in a similar way to betting exchanges, in that individuals are matched on either side of a proposition. The key evolution is that any user can propose a market on any event, with a high level of anonymity and bet any amount of currency to be matched by another user.

359 Australian Communications and Media Authority, ‘Register of licensed interactive wagering services providers’, <<https://www.acma.gov.au/theACMA/register-of-licensed-interactive-wagering-services>>, accessed 24 January 2018.

360 Northern Territory Government, Racing Commission, ‘Sport bookmakers and betting exchange operators’, <<https://justice.nt.gov.au/attorney-general-and-justice/racing-commission/sports-bookmakers-and-betting-exchange-operators>>, accessed 28 November 2017.

361 *Betfair Pty Ltd v Western Australia* (2008) 234 CLR 418.

362 Department of Social Services, ‘Review of Illegal Offshore Wagering’ (lead reviewer, the Hon. Barry O’Farrell, 18 December 2015).

363 CERT-LEXSI. Cybercriminalité des Jeux en Ligne; Livre Blanc du CERT-LEXSI (Laboratoire d’Expertise en Sécurité Informatique), Paris, France, 2006 cited in Andreff, W, ‘Complexity Triggered by Economic Globalisation—The Issue of On-Line Betting-Related Match Fixing’, *Systems*, 2017, 5, 12.

364 Andreff, W, ‘Complexity Triggered by Economic Globalisation—the Issue of On-Line Betting-Related Match Fixing’, *Systems*, 2017, 5, 12.

365 *Ibid.*

Some attractions of user-generated prediction markets for consumers include:

- very low fees from winning bets are taken by the operator
- market creators are often paid a percentage of the market generated
- fast and efficient transactions
- absence of regulatory oversight
- a limitless range of potential markets.

Many of these wagering platforms are considered 'unregulated or partially regulated' and it is estimated that several thousand³⁶⁶ such platforms provide or have provided services accessible to Australian residents in contravention of Commonwealth laws.

COMPETITIVE ADVANTAGE OF UNREGULATED OR PARTIALLY REGULATED PLATFORMS

The attractions of wholly and partially unregulated WSPs to Australian customers include features prohibited from offer in Australia, such as:

- anonymity– including through WSPs using crypto-currencies and peer-to-peer wagering platforms
- credit offerings such as personalised settlement avenues and transfers between accounts
- online in-play wagering
- a greater variety of spot-wagering types (than are authorised through Australian regulated channels)
- better returns due to reduced administrative costs, including little or no levies, no product fees payable to sports and no costs associated with compliance with regulatory requirements.

366 University Paris 1 Panthéon-Sorbonne & International Centre for Sport Security (ICSS), 2014, Protecting the Integrity of Sport Competition: the last bet for modern sport, Executive Summary, Sorbonne-ICSS Research Programme on Ethics and Sport Integrity, accessed 24 November 2011, <http://www.theicss.org/wp-content/themes/icss-corp/pdf/SIF14/Sorbonne-ICSS%20Report%20Executive%20Summary_WEB.pdf?lbisphreq=1>, cited in Department of Social Services, 'Review of Illegal Offshore Wagering', December 2015.

3. REGULATION OF SPORTS WAGERING IN AUSTRALIA

Gambling is one of the most heavily regulated industries globally, and in Australia, this is no different. Australia's federated system of government amplifies the complexity of the regulatory environment, with more than 90 different ordinances governing the provision of gambling services operating across the nation.³⁶⁷

Each Australian state and territory operates its own system of gambling regulation, and all systems are subject to the Commonwealth overlay of the IGA, regulating the provision of online gambling products, including online wagering services.

Each jurisdiction also administers an independent regulator or licensing body responsible for the regulation of the gambling industry. This is in addition to a range of other legislative requirements relating to currency handling, transactions reporting, taxation and licensing of individuals in the sector.

3.1 COMMONWEALTH REGULATION OF SPORTS WAGERING (ONLINE GAMBLING)

The Australian Government has responsibility for regulating the provision of telecommunications in Australia, and administers provision of online wagering services through the IGA.³⁶⁸

The IGA establishes a general offence of offering an interactive gambling service to a consumer physically located in Australia,³⁶⁹ but identifies particular services as excluded from that general prohibition, including wagering on a sporting event.³⁷⁰ However, the provisions do not permit online wagering on a sporting event after the event has begun (online in-play betting).³⁷¹

The IGA operates concurrently with state and territory law relevant to the availability or offering of online wagering services, and is not intended to exclude state and territory legislation that is capable of concurrent operation.³⁷² The IGA does

not limit or restrict in any way the capacity of state and territory governments to renew existing interactive gambling licences or approvals, or to issue further licences or approvals as appropriate.

ACMA is empowered to act as a regulator, enforcing the provisions of the IGA, and its powers were recently enhanced through amendments to the IGA that are discussed further below.

In addition to the Commonwealth overlay of the IGA, the Commonwealth has legislation relevant to WSPs as regular commercial entities, such as Goods and Services Tax requirements, reporting obligations for currency and transactions, income and business taxes, and general responsibilities as employers.

THE 2015 REVIEW OF THE IMPACT OF ILLEGAL OFFSHORE WAGERING (O'FARRELL REVIEW)

The O'Farrell Review examined the social and economic impacts of illegal offshore wagering, with a view to strengthening the enforcement of the IGA and ensuring Australia is adequately protected from identified harms.

The Australian Government response to the O'Farrell Review included a range of consumer protections and legislative measures³⁷³ to minimise accessibility to unlicensed operators or prohibited services. Much of the government response, at least with respect to illegal offshore gambling, is focused on amendments to the IGA intended to reduce the provision of illegal online gambling services to Australian residents through stronger enforcement and disruption measures.

367 Australasian Gaming Council, 2016, 'A Guide to Australasia's Gambling Industries 2015-16'.

368 Department of Communication and the Arts, 'Review of the Interactive Gambling Act 2001', 24 September 2015, <<https://www.communications.gov.au/publications/final-report-review-interactive-gambling-act-2001>>.

369 *Interactive Gambling Act 2001* (Cth) s 15.

370 Op. cit. s 8A(1).

371 Op. cit. s 8A(2).

372 Op. cit. s 69.

373 Department of Social Services, 'Government Response to the 2015 Review of the Impact of Illegal Offshore Wagering', April 2016.

Reforms included:

- clarifying that it is illegal for gambling companies to provide certain gambling services to Australians unless the person or company holds a licence under the law of an Australian state or territory
- empowering ACMA to notify international regulators of their licensees who may be providing interactive gambling services to persons present in Australia in contravention of the IGA, and to raise awareness of the IGA and receive enforcement assistance
- establishing a civil penalty regime that allows ACMA to investigate and enforce penalties
- empowering ACMA to refer company directors or principals of offending gambling companies to Australian border protection agencies for inclusion on the Movement Alert List, so any travel to Australia can be disrupted.

Other measures are aimed at consumer protection, including:

- maintaining the ban on online in-play betting in Australia, and clarifying that 'click-to-call' in-play betting services are prohibited
- publishing on the ACMA website a list of WSPs that are licensed in an Australian state or territory, and are therefore not prohibited from offering online wagering services in Australia.

The Australian Government also agreed to consider options, in consultation with internet service providers, for disrupting access to offshore online WSPs not licensed in Australia through the use of blocking or pop-up warning pages; and to consult with banks and credit card providers to assess the potential options and practicality of payment blocking strategies to address illegal offshore gambling.³⁷⁴

3.2 STATE AND TERRITORY REGULATION OF SPORTS WAGERING

While all states and territories have regulatory regimes with respect to gambling and wagering, the extent to which each jurisdiction has enacted legislation which deals directly, or in any detail, with sports wagering varies.

In Australia, the regulation of sports wagering is, at a high level, shaped by the National Policy, which establishes the Sports Betting Operational Model (SBOM) outlined below.

Considerable regulatory complexity in the domestic sports wagering market stems from the varying ways that jurisdictional regulatory schemes are formulated, and the advent of online wagering. Each jurisdiction can regulate, in various ways:

- sports wagering services provided by WSPs licensed in that jurisdiction
- online sports wagering services available within that jurisdiction provided by WSPs licensed in other jurisdictions
- wagering markets, both within and outside that jurisdiction, shaped on sporting competitions within that jurisdiction.

3.3 THE NATIONAL POLICY ON MATCH-FIXING IN SPORT AND SPORTS WAGERING

The National Policy was agreed by all Australian governments in 2011, and anticipates a 'Sports Betting Operational Model'³⁷⁵ (SBOM) be adopted by all jurisdictions, similar to that developed and implemented by the Victorian Government in 2007.

A key aspect of the SBOM is the tripartite governance arrangement distributing responsibility for maintaining the integrity of sports wagering across:

- National Sporting Organisations (NSOs) which, upon demonstrating their ability and resourcing to monitor, report and manage integrity threats, are granted sports controlling body (SCB) status and become responsible for authorising contingencies on their sports, and are eligible to enter into product fee and integrity agreements (PFIAs) with WSPs (enabling them to charge a product fee based on wagering on their sport)
- WSPs, which, seeking to offer wagering markets on sports, are obligated to establish and maintain partnerships with SCBs, reporting and sharing information/data and payment of a product fee to SCBs
- the relevant regulator, which retains regulatory powers over WSPs for wagering licences, and is empowered to assess the effectiveness of NSO integrity frameworks and essentially deem them ineligible to charge a product fee if integrity obligations have not been met. Co-recognition of SCB status among regulators across Australia is also intended.

³⁷⁴ Ibid.

³⁷⁵ Elucidated further by representatives of Australian governments following the initial agreement to the National Policy.

Recognising that the manner in which states and territories may implement the National Policy may differ, additional provisions anticipated (but not required) by the National Policy include: those relating to information sharing between the SCB and WSPs (particularly in aid of identifying members who may be placing bets in contravention of a sport's code of conduct, or breach of contract with the sport); international information sharing for multinational sporting events; and provisions allowing for relevant regulators to have the right of approval in relation to sport betting (on contingencies and events generally), and to impose conditions and seek information from SCBs and WSPs.

3.4 IMPLEMENTATION OF THE SPORTS BETTING OPERATIONAL MODEL

The current status of the implementation of the SBOM across Australian jurisdictions is as follows:

- Victoria passed legislation in 2007
- New South Wales passed legislation in June 2014
- The Northern Territory introduced licensing conditions in September 2015 that give effect to the model by requiring compliance with regulations of other states and territories (effectively covering most Australian-based corporate operators, which are licensed in the Northern Territory)
- Remaining jurisdictions are yet to introduce legislation.

IMPLEMENTATION IN VICTORIA

The Victorian legislative regime, contained in Part 5 of Chapter 4 of the *Gambling Regulation Act 2003* (Vic.), provided the framework for the development of the SBOM in the National Policy.

At the highest level, the Victorian scheme prohibits a WSP³⁷⁶ from offering a wagering service on an event designated as a 'sports betting event' held wholly or partially within Victoria, unless the WSP has entered into a PFIA with the relevant SCB (if one exists). This applies to both Victorian and interstate licensed WSPs.

'Sports betting events'³⁷⁷ are a designated subset of a larger pool of 'approved betting events',³⁷⁸ on which Victorian-licensed WSPs may shape wagering markets. A Victorian-licensed WSP is permitted to

offer betting on 'approved betting events', whereas interstate WSPs may offer betting on events approved by the licensing jurisdiction, subject to compliance with the PFIA requirements.

The *Gambling Regulation Act 2003* is prescriptive about what must be established for an NSO to be recognised as an SCB,³⁷⁹ and requires that PFIAs provide for (as a minimum): the sharing of information for the purposes of protecting and supporting the integrity of sports and sports wagering; and the disclosure of whether a fee is to be paid by the WSP to the SCB and, if so, what it is or how the fee is calculated.³⁸⁰

The *Gambling Regulation Act 2003* seeks to ensure that SCBs have adequate systems to ensure the integrity of events as well as the expertise, resources and authority necessary to administer and enforce those systems. It requires SCBs to monitor and report suspected corrupt behaviour to the Victorian regulator through mandatory reporting requirements.³⁸¹

IMPLEMENTATION IN NEW SOUTH WALES

In New South Wales, the SBOM is implemented through the *Betting and Racing Act 1998* (NSW) and the *Betting and Racing Regulation 2012* (NSW). At the highest level, the *Betting and Racing Act* prohibits a WSP³⁸² from offering wagering services in New South Wales or elsewhere on a sporting event (or class of sporting events) held wholly or partially in New South Wales unless the WSP has a PFIA in place with the relevant SCB (if one exists).

In this respect, the New South Wales legislation has broader application by referring to 'sporting event' in its ordinary meaning, compared to the Victorian scheme, which refers to a 'sports betting event', as defined in the Act and prescribed by the relevant authority.

The scheme specifies what must be established by the NSO for approval as an SCB (or at least, considered by the minister in approving SCB status), and includes (in a similar, but less prescriptive way than the Victorian scheme) the need to consider:

- the degree to which the applicant controls, organises or administers the event
- the means by which the applicant can ensure the integrity of the event

376 In the *Gambling Regulation Act 2003* (Vic.), referred to as a 'sports betting provider' (Section 4.5.1), and defined broadly as a person who, in Victoria or elsewhere, provides a service that allows a person to place a bet on a sports betting event.

377 *Gambling Regulation Act 2003* (Vic.) s 4.5.9.

378 Op. cit. s 4.5.6.

379 Op. cit. Division 4 Part 5 Chapter 4.

380 Op. cit. Chapter 4.

381 Op. cit. Division 7 Part 5 Chapter 4

382 In the Act, referred to as a 'betting service provider', which is defined broadly as: 'a bookmaker, a person who operates a totalizator or a person who operates a betting exchange', Section 4.

- the expertise and resources of the applicant
- whether the approval of the applicant is in the public interest.³⁸³

The scheme also sets out some minimum requirements for PFIAs, which are more prescriptive than those in Victoria.³⁸⁴ PFIAs must:

- set out the measures that will be used to prevent, investigate and assist in the prosecution of any match-fixing or other corrupt behaviour related to betting on the sporting event
- provide for funding to go to the SCB *for the purposes of implementing some or all of those measures* [emphasis added] (unless the SCB does not want any such funding)³⁸⁵
- provide for the sharing of information between the SCB and the applicant.

IMPLEMENTATION IN THE NORTHERN TERRITORY

The Northern Territory has not enacted legislation giving effect to the National Policy. However, requirements of the National Policy are embedded in licence conditions imposed by the Northern Territory Racing Commission (NTRC) as the body responsible for regulating sports bookmakers and betting exchange operators in the Northern Territory.

3.5 REGULATION OF THE AVAILABILITY OF SPORTS WAGERING THROUGHOUT AUSTRALIA

The SBOM provides a solid foundation for the regulation of sports wagering throughout Australia, and sets the groundwork for building effective, integrity-focused relationships between WSPs, sporting organisations and regulators.

However, the SBOM does not, even in the states in which it has been implemented in full or in part, explain fully the availability of sports wagering, including the availability of authorised contingencies in different jurisdictions.

Broadly, to the extent that a gambling service is provided lawfully pursuant to a licence granted in a particular state or territory, such a service will also be recognised as being lawful in other Australian jurisdictions, subject to certain limitations and prohibitions which may apply (as long as they are applied non-discriminatorily).³⁸⁶

However, SWSPs must comply with regulations in the jurisdiction in which they are licensed; and to the extent that services are provided online, with the regulations of any other jurisdiction in which wagering services are offered, as well as the Commonwealth IGA. As such, there remains a patchwork of regulation that depends, variously, on the jurisdiction in which a provider is licensed, the jurisdiction in which the services are being offered, and any regulations which might be associated with the location of the sporting competition itself. Some examples of this complexity are provided below.

NEW SOUTH WALES

In New South Wales, consumers are able to access sports wagering through WSPs licensed in New South Wales, as well as online, through WSPs licensed in another jurisdiction.

New South Wales-licensed SWSPs must comply with all New South Wales regulations including that wagering *may only be offered* on a declared betting event by a WSP with a declared betting event authority. A WSP must apply to the New South Wales regulator for an event, including a sporting event (wherever the event may be held), to be prescribed as a declared betting event.

A WSP licensed in any other state or territory, but providing online wagering services in New South Wales, is seemingly not required to have any particular authority to provide services to New South Wales residents, and is not limited by New South Wales requirements that a betting event be a 'declared betting event' pursuant to the New South Wales scheme.

The New South Wales scheme does, however, require that an interstate betting service provider be licensed, and have an integrity agreement in place with the relevant SCB, with respect to *any* sporting event or class of sporting events held wholly or partly in New South Wales (if an SCB for that event exists).

It would appear that this requirement of the New South Wales scheme has extraterritorial application for sporting events held wholly or partially in New South Wales. For instance, a WSP licensed in the Northern Territory offering a wagering market in Western Australia on an event held in Sydney may commit an offence if the WSP does not have an agreement in place with an SCB recognised for that event.

383 Betting and Racing Regulation 2012 (NSW) – Part 3A – Sports Controlling Bodies.

384 Betting and Racing Act 2012 (NSW) s 18A(3).

385 The Victorian scheme does not specify that funding be for the implementation of integrity measures.

386 See both *The State of Victoria v Sportsbet Pty Ltd* [2012] FCAFC 143 and *Betfair Pty Limited v Western Australia* (2008) 234 CLR 418.

It is unclear to what extent the above requirement can be given effect in circumstances where, for instance, a Northern Territory-licensed bookmaker offers online wagering services to a person in Western Australia on an AFL match held in Victoria. Leaving aside relevant Victorian legislation for the moment, given that such an AFL match would be part of a class of sports betting events held partly in New South Wales,³⁸⁷ section 18C of the *Betting and Racing Act 1998* (NSW) would seemingly prohibit a betting service provider (licensed in any Australian jurisdiction) from offering any betting service on such an AFL match in the absence of an integrity agreement, regardless of whether this was a requirement of any of the three jurisdictions with a stronger nexus to the events.

VICTORIA

Similarly, in Victoria, consumers are able to access sports wagering through WSPs licensed in Victoria, as well as online and telephone, through WSPs licensed in another jurisdiction.

Again, similar to the New South Wales scheme, the Victorian-licensed WSPs must comply with all Victorian regulations, including that wagering may only be offered on 'approved betting events', a subset of which are 'sports betting events'. The Victorian authority can approve any event for betting purposes whether 'wholly or partly within or outside Victoria'.

A WSP licensed in any other state or territory, but providing online wagering services to Victorians, operates on the authority conferred by the licensing jurisdiction, and is not limited by requirements that a betting event be an 'approved betting event' under the Victorian scheme.

However, the Victorian scheme prohibits any WSP (here, defined widely as 'sports betting provider') from offering wagering services in Victoria or elsewhere on an event held wholly or partially in Victoria and declared as a 'sports betting event' unless an agreement is in place with a relevant SCB (if one exists).

Thus, the extraterritoriality of the Victorian scheme for events held wholly or partially in Victoria is not as broad as that in New South Wales, applying only to those sporting events that have been declared sports betting events by the Victorian regulator.

NORTHERN TERRITORY

The Northern Territory is seemingly the only Australian jurisdiction in which a purely 'online wagering licence' is available – in all other jurisdictions, it appears that provision of online wagering services is associated with a regular bookmaker's licence granted or registered with a racing controlling body. The NTRC is the primary regulator (at the jurisdictional level) of online WSPs in Australia.

The NTRC has, in effect, enacted the SBOM through licensing conditions. Currently there is no requirement for interstate WSPs to have integrity agreements with SCBs responsible for sporting events held in the Northern Territory.

Licensing NT publishes a list of contingencies known as *Declared Sporting Events*³⁸⁸ for wagering, including for Australian sporting events. This list is the most extensive of the states and territories and effectively allows WSPs the choice of contingencies on which to frame markets, limited then only through prohibitions in other states and territories.

SOUTH AUSTRALIA

In addition to regulation applying to WSPs licensed in South Australia, the Government of South Australia also authorises interstate WSPs to provide services to South Australians on conditions, including:

- annual reports are provided regarding activity in South Australia
- the operator continues to comply with legal requirements of the licensing jurisdiction
- the operator complies with South Australian advertising and responsible gambling codes of practice, including those designed to prevent betting by minors.

The South Australian regulator also publishes a schedule of approved betting contingencies, with which the authorised interstate WSPs must comply. While there is no formal requirement for integrity agreements between WSPs and SCBs (as South Australia has not formally enacted the SBOM), the South Australian scheme does require consideration as to, inter alia, the extent of the relationship between the licensee applicant and the 'body controlling the event', including any integrity arrangements.

387 *Betting and Racing Act 1998* (NSW) s18C(3) and (5).

388 Northern Territory Government, 'Declared Sporting Events for Bookmaking', 30 November 2017, <<https://nt.gov.au/industry/gambling/bookmaker-licences-and-permits/declared-sporting-events-for-bookmaking>>.

CRIMINALISATION OF THE MANIPULATION OF SPORTING COMPETITIONS AND RELATED CORRUPTION

Another key commitment under the National Policy³⁸⁹ was for all states and territories, separately, to enact legislation creating specific offences in their respective jurisdictions to criminalise match-fixing behaviours.

1. CURRENT STATUS

States and territories have responded individually to implement the commitment to legislate, with specific new laws being similar in effect. Western Australia and Tasmania have not enacted specific legislation in response to the National Policy but, we understand, have assessed that the defined match-fixing behaviours could be successfully charged under existing fraud provisions.

2. CORRUPTING A SPORTS EVENT

The Australian Capital Territory, New South Wales, the Northern Territory, South Australia and Victoria specifically criminalise engaging in conduct that corrupts the betting outcome of an event. Queensland legislation criminalises engaging in 'match-fixing conduct', which includes conduct affecting the outcome of a sporting event. All of these jurisdictions except the Australian Capital Territory also criminalise facilitating conduct that corrupts the betting outcome of an event, although it is possible that the complicity provisions in the Criminal Code of the Australian Capital Territory could capture conduct of that nature.

3. CONCEALING CORRUPT BETTING CONDUCT

Legislation in New South Wales, the Northern Territory, South Australia and Victoria makes it an offence to encourage another person to conceal conduct, or an agreement in respect of conduct, that corrupts the betting outcome of an event. Similarly, Queensland legislation criminalises encouraging another person not to disclose match-fixing conduct or a match-fixing arrangement.

Queensland legislation also criminalises offering or giving a benefit, or causing or threatening detriment, to engage in match-fixing conduct or a match-fixing arrangement.

4. BETTING WITH CORRUPT CONDUCT INFORMATION

The Australian Capital Territory, New South Wales, the Northern Territory, Queensland, South Australia and Victoria all criminalise the use and disclosure of corrupt conduct information for betting purposes. Corrupt conduct information differs from inside information, as it specifically relates to knowledge that the event is corrupted, rather than inside information where the result still remains uncertain.

5. DISCLOSING AND USING INSIDE INFORMATION FOR BETTING PURPOSES

The Australian Capital Territory, New South Wales, the Northern Territory, Queensland and South Australia criminalise betting with inside information, disclosing inside information for betting purposes and encouraging a person to bet in a particular way based on inside information. Inside information offences are broadly similar in principle to the 'insider trading' offences applicable in relation to financial markets, in that they are not necessarily restricted to manipulated betting outcomes. They involve information that is not generally available but which, if it were generally available, would be likely to influence a person who would bet on the event in their betting decisions.

The current relevant sections of state and territory legislation are summarised in Table 4 below.

Table 4: Summary of criminal legislation

	Vic.	NSW	ACT	WA	Qld	SA	NT	Tas.
Specific match-fixing or cheating at gambling offences	Yes	Yes	Yes	No	Yes	Yes	Yes	No
Inside information offence	No	Yes	Yes	No	Yes	Yes	Yes	No
Link to betting outcomes required	Yes	Yes	Yes	No	No – pecuniary benefit instead	Yes	Yes	No
Maximum penalty	10 years for all offences – all offences indictable	10 years for all but insider information, which carries 2 years. Insider information is a summary offence (6-month limitation period)	10 years for all but insider information, which carries 2 years. All offences are indictable		10 years for all but insider information, which carries 2 years. All offences are 'crimes' – no limitation periods apply	10 years for all but insider information, which carries 2 years. Insider information is a summary offence (6-month limitation period)	10 years for all but insider information, which carries 2 years. Insider information is a summary offence (6-month limitation period)	

APPENDIX A

WAGERING ON AUSTRALIAN SPORT, AND CRIMINALISATION OF MANIPULATION OF SPORTS COMPETITIONS AND RELATED CORRUPTION

APPENDIX

B

ANTI-DOPING FRAMEWORK

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I. THE INTERNATIONAL ANTI-DOPING LANDSCAPE AND AUSTRALIA'S INTERNATIONAL OBLIGATIONS

Australia's anti-doping program operates in an international environment – a complex and dynamic landscape requiring a proactive and strategic approach to managing global partnerships.

The international anti-doping program is given effect through a complicated system of contractual agreements, international instruments and regulation involving governments (under UNESCO treaty) and non-government entities (including the International Olympic Committee (IOC), World Anti-Doping Agency (WADA) and international sporting organisations (ISOs).

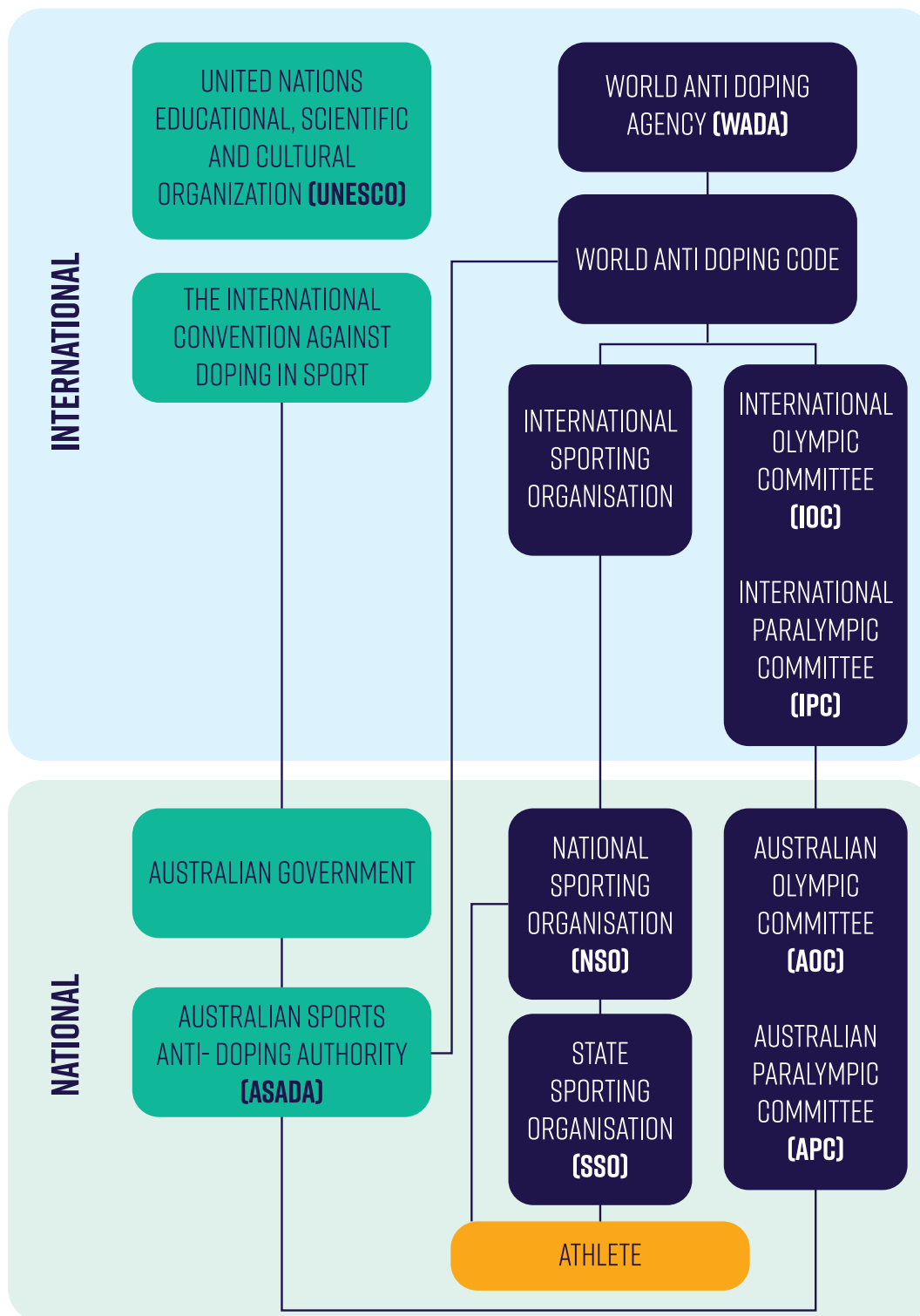
This is why, generally, instances of doping are treated as disputes between parties (i.e. between an athlete and the relevant sporting organisation) and are adjudicated through private arbitration rather than the exercise of judicial power. Similarly, sanctions imposed once an anti-doping rule violation (ADRV) is established (for the most part,

ineligibility to participate), are implemented and enforced by responsible national/local sporting organisations ultimately because failing to comply may result in cascading sanctions under private agreements with more senior organisations in the hierarchy.

Figure 9 illustrates the hierarchy of organisations and agreements that form the international anti-doping framework. In brief, WADA was established as an independent international agency in 1999 through an initiative of the International Olympic Committee, and with the support of governments and the international sporting community.

Figure 9: National and International Anti-Doping Arrangements

NATIONAL AND INTERNATIONAL ANTI-DOPING ARRANGEMENTS



The establishment of WADA provided for the operation of an independent anti-doping observer program for the 2000 Sydney Olympic Games³⁹⁰ – an effort, in part, to rebuild public trust in the fairness of sport after the 1998 revelations of widespread doping in international cycling (particularly the Tour de France).³⁹¹ The pursuit of fairness in competition and of a global 'level playing field' remains central to the anti-doping effort. While each country is required to establish its own domestic anti-doping arrangements, WADA retains critical responsibility for the global harmonisation of central elements of the World Anti-Doping Program.

To achieve this harmonisation, in March 2003 the World Anti-Doping Code (Code) was unanimously accepted by sport and governments at the World Conference convened in Copenhagen. The Code is 'the core document that harmonises anti-doping policies, rules and regulations within sport organizations and among public authorities around the world'.³⁹² Sport federations committed to adopting the Code in their rules by the time of the Opening Ceremony for the 2004 Athens Olympic Games. Governments committed to the Code by agreeing to establish and ratify an international treaty recognising the Code (thereby becoming a 'state party' to the Convention). The UNESCO International Convention against Doping in Sport (the UNESCO Convention) was drafted and approved for ratification in 2005.

More than 660 organisations around the world have accepted the Code by becoming signatories,³⁹³ and 187 national governments have committed to adopting the principles of the Code by becoming state parties to the UNESCO Convention.³⁹⁴

1.1 THE WORLD ANTI-DOPING AGENCY AND THE CODE

WADA's key activities are: scientific research, education, development of international anti-doping capacities, and monitoring compliance with the World Anti-Doping Program.

There are three elements/instruments managed and administered by WADA, which together comprise the World Anti-Doping Program, and have ensured optimal harmonisation and best practice in international and national anti-doping programs:

- the Code
- the International Standards
- Models of Best Practice and Guidelines.

The Code is the central document that sets out the rights, roles and responsibilities of stakeholders, and harmonises and formalises practice and procedure for the administration of anti-doping programs around the world – an important step in a previously fragmented system. The Code is 'intended to be specific enough to achieve complete harmonisation on issues where uniformity is required, yet general enough in other areas to permit flexibility on how agreed-upon anti-doping principles are implemented'.³⁹⁵

Sports and governments agree to implement the Code within their sphere of influence. Governments (including the Australian Government) are bound to implement the principles of the Code through the UNESCO Convention. ISOs and other international non-government organisations (such as multisport event organisations) can become direct signatories to the Code. Code compliance filters down to NSOs through ISOs requiring them to adopt Code-compliant policies. In Australia, Code compliance is also a precondition for NSOs to gain government recognition and funding eligibility.

The Code gives rise to a number of requirements with which signatories must comply to remain 'Code compliant'. WADA monitors and adjudicates on compliance with the Code, and reports cases of noncompliance to organisations able to impose sanctions. For instance, if an Olympic sporting organisation becomes noncompliant, WADA is obligated to report this to the IOC, as under the Olympic Charter, only Code-compliant sports may compete in the Olympics.³⁹⁶

390 World Anti-Doping Agency, 'Who we are', <<https://www.wada-ama.org/en/who-we-are>>, accessed 12 January 2018.

391 BBC, 'Doping in sport: What is it and how is it being tackled?', 20 August 2017, <<http://www.bbc.com/sport/athletics/33997246>>.

392 World Anti-Doping Agency, 'The Code', <<https://www.wada-ama.org/en/what-we-do/the-code>>, accessed 12 January 2018.

393 Ibid.

394 United Nations Educational, Scientific and Cultural Organization, 'Signatories to the International Convention against Doping in Sport' (as at 19 October 2015), <<http://www.unesco.org/eri/la/convention.asp?KO=31037&language=E>>.

395 World Anti-Doping Agency, 'WADA launches first phase of 2021 World Anti-Doping Code review process', 12 December 2017, <<https://www.wada-ama.org/en/media/news/2017-12/wada-launches-first-phase-of-2021-world-anti-doping-code-review-process>>.

396 *Olympic Charter*, International Olympic Committee (effective as of 2 August 2015) rule 45.

Non-compliance with the Code by any signatory may also result in consequences including ineligibility to bid for major events run by the IOC, ISOs and major event organisations; the forfeiture of offices and positions within WADA; a cancellation of international events; symbolic consequences; and other consequences pursuant to the Olympic Charter. The Code obliges the IOC to accept bids for the Olympic Games only from countries where the government has ratified, accepted, approved or acceded to the UNESCO Convention and where the relevant National Olympic Committee, National Paralympic Committee and NADO are in compliance with the Code.³⁹⁷ A similar but more discretionary obligation is placed on international federations.³⁹⁸

INTERNATIONAL STANDARDS

International Standards have been developed by WADA to deal with specific technical and operational aspects of the anti-doping program. Adherence to the International Standards is mandatory for compliance with the Code. Each International Standard may be amended from time to time by WADA's Executive Committee.

At present, there are five International Standards, namely:

- Prohibited List (specifying substances and methods prohibited from sport)
- Testing and investigations (collection of samples for testing, and intelligence gathering and the conduct of investigations)
- Laboratories (sample analysis by accredited or approved laboratories)
- Therapeutic Use Exemptions (TUEs) (issuing therapeutic use exemptions for athletes to obtain legitimate medical treatment involving substances that are prohibited from sport)
- Protection of privacy and personal information.

A new 'International Standard for Code Compliance by Stakeholders' is due to come into force on 1 April 2018.³⁹⁹ It outlines the rights and responsibilities of Code signatories and the role

of WADA in supporting signatories to maintain Code compliance. The Standard also specifies how noncompliance is assessed and the consequences that could be levied in situations of noncompliance.

MODELS OF BEST PRACTICE AND GUIDELINES

The Models of Best Practice and Guidelines are a set of guiding documents developed by WADA based on the requirements of the Code and the International Standards. They are designed to provide solutions with regard to different aspects of anti-doping, and to assist organisations to develop organisational frameworks that align with the Code.

1.2 ANTI-DOPING RULE VIOLATIONS

Under Article 2 of the Code, doping is classified as the occurrence of one or more of 10 ADRVs.

Since the introduction of the Code, anti-doping regimes have been heavily reliant on violations being detected through the presence of a prohibited substance in a sample collected from the athlete (a 'positive test' or 'adverse analytical finding').

However, to keep pace with advances in doping technologies and strategies, the international approach to detecting doping is shifting towards intelligence-based investigations, enabling sanctions to be applied in cases where there is no positive doping sample but where there may be evidence a doping violation has occurred (e.g. through a combination of missed tests/ whereabouts failures, longitudinal testing or evidence brought forward through an investigation).

ADRVs BASED ON ADVERSE ANALYTICAL FINDINGS (AAFS)

Only one ADRV is established through analytical evidence from testing of urine and blood samples:

- Article 2.1: Presence of a prohibited substance or its metabolites or markers in an athlete's sample.⁴⁰⁰

³⁹⁷ *World Anti-Doping Code*, World Anti-Doping Agency (effective as of 1 January 2015), Article. 20.1.8.

³⁹⁸ *Op. cit.*, a. 20.3.11.

³⁹⁹ World Anti-Doping Agency, 'WADA publishes new Compliance Standard that takes effect 1 April 2018', 21 December 2017, <<https://www.wada-ama.org/en/media/news/2017-12/wada-publishes-new-compliance-standard-that-takes-effect-1-april-2018>>.

⁴⁰⁰ *World Anti-Doping Code*, World Anti-Doping Agency (effective as of 1 January 2015), a. 2.1.

NON-AAF ADRVS

Non-AAF ADRVs are based on the collection of sufficient evidence through compliance failures and intelligence gathering and investigations to establish that a doping violation has occurred. There are nine non-AAF ADRVs:

- Article 2.2: Use or attempted use by an athlete of a prohibited substance or prohibited method
- Article 2.3: Refusing or failing without compelling justification to submit to sample collection after notification as authorised in applicable anti-doping rules, or otherwise evading sample collection
- Article 2.4: Whereabouts failures – violation of applicable requirements regarding athlete availability for out-of-competition testing including failure to file required whereabouts information and missed tests which are declared based on rules which comply with the International Standard for Testing
- Article 2.5: Tampering or attempted tampering with any part of doping control
- Article 2.6: Possession of prohibited substances and prohibited methods
- Article 2.7: Trafficking or attempted trafficking in any prohibited substance or prohibited method
- Article 2.8: Administration or attempted administration to any athlete in-competition of any prohibited method or prohibited substance,

or administration or attempted administration to any athlete out-of-competition of any prohibited method or any prohibited substance that is prohibited out-of-competition, or assisting, encouraging, aiding, abetting, covering up or any other type of complicity involving an ADRV or any attempted ADRV

- Article 2.9: Complicity (Assisting, encouraging, aiding, abetting, conspiring, covering up or any other type of intentional complicity involving an actual or attempted ADRV)
- Article 2.10: Prohibited Association.⁴⁰¹

1.3 SANCTIONS

Sanctions are imposed for an ADRV, and include the disqualification of results, repayment of prize money and the imposition of a period of ineligibility to compete. In some countries, doping in sport has been criminalised and the penalties may include imprisonment.

Sanction regimes are set out in the anti-doping policies of each sport, and sports decide the penalty for an ADRV within the framework of the Code. This regime usually reflects the sanctions specified in Article 10 of the Code, which outlines the sanction that may be applied to first and subsequent violations and sets out certain circumstances in which periods of ineligibility may be reduced.

Examples of how the sanction process operates are set out in Appendix 2 to the Code.⁴⁰²

⁴⁰¹ Ibid.
⁴⁰² Op. cit., Appendix 2.

2. STAKEHOLDERS IN THE ANTI-DOPING FRAMEWORK

The Code sets out the roles and responsibilities of the participants in the international anti-doping framework at every level:

2.1 INTERNATIONAL SPORTING ORGANISATIONS

International Sporting Organisations (ISOs) include the International Olympic Committee (IOC), the International Paralympic Committee (IPC) and International Sports Federations (IFs).

The IOC and IPC (and other major international multisport event organisations, including the Commonwealth Games Federation) are responsible for implementing a Code-compliant testing process and enforcement and sanctioning in respect of ADRVs during relevant events.

For IFs to be considered compliant with the Code they must demonstrate they have accepted, implemented and enforced the Code. This involves implementing education programs, conducting testing at competitions, having out-of-competition testing programs and sanctioning ADRVs identified by the organisation.

2.2 ATHLETES AND THE ENTOURAGE

Anti-doping programs operate on the principle of strict liability. This means that an athlete is solely responsible if a prohibited substance is found in their body. As a result, athletes must understand and comply with the Code. In Australia, any athlete competing in a sport under a governing body with an anti-doping policy is considered subject to ASADA's doping control regime. Some athletes are part of a Registered Testing Pool or Domestic Testing Pool, based on their level of competition and doping risk profile. Athletes in the Registered Testing Pool are required to provide whereabouts information to ASADA so that they can be tested out-of-competition without advance notice.

Members of the athlete entourage are also responsible for complying with the Code. This includes athlete support personnel such as coaches, trainers, managers, parents, officials, medical personnel etc. working with, treating or assisting an athlete participating in or preparing for sports competition.

2.3 GOVERNMENTS

Governments have a broad role within the international anti-doping framework, in most instances through international obligations arising under the UNESCO Convention. Australia ratified the UNESCO Convention on 17 January 2006 and it came into force on 1 February 2007.

The UNESCO Convention guides the formulation of anti-doping legislation, policies, rules and guidelines and aligns these with the Code. In particular, state parties are required to take specific action to:⁴⁰³

- restrict the availability of prohibited substances or methods to athletes (except for legitimate medical purposes) including measures against trafficking
- facilitate doping controls and support national testing programs
- withhold financial support from athletes and athlete support personnel who commits an ADRV, or from sporting organisations that are not in compliance with the Code
- encourage producers and distributors of nutritional supplements to establish 'best practice' in the labelling, marketing and distribution of products which might contain prohibited substances
- support the provision of anti-doping education to athletes and the wider sporting community.

2.4 NATIONAL ANTI-DOPING ORGANISATIONS

National Anti-Doping Organisations (NADOs) are generally responsible for the delivery of Code-compliant anti-doping programs and activities, including the testing of national-level athletes in and out-of-competition, as well as athletes from other countries competing within that nation's borders. Australia's NADO is ASADA.

Under the Code, NADOs are also responsible for adjudicating ADRVs, which includes an obligation to ensure that a person accused of an ADRV has

403 United Nations Educational, Scientific, and Cultural Organization, 'International Convention against Doping in Sport', accessed 12 January 2018, <<http://www.unesco.org/new/en/social-and-human-sciences/themes/anti-doping/international-convention-against-doping-in-sport/>>.

access to a fair hearing within a reasonable time by an impartial panel.⁴⁰⁴ In Australia, responsibility for adjudicating ADRVs has been divested to sporting organisations through agreement with ASADA. NADOs are also responsible for encouraging and promoting anti-doping education and research.⁴⁰⁵

2.5 NATIONAL SPORTING ORGANISATIONS (NSOS)

A National Sporting Organisation (NSO) is defined in the ASADA Act as:

- a sporting organisation that is recognised by the International Sporting Organisation as being the organisation responsible for administering the affairs of the sport, or of a substantial part or section of the sport, in Australia

or

- a sporting organisation that is recognised by the Australian Sports Commission (ASC) as being responsible for administering the affairs of the sport, or of a substantial part or section of the sport, in Australia.

NSOs include the Australian Olympic Committee and the Australian Paralympic Committee.

The requirement for Code compliance generally flows from the NSO's membership of their ISO. For example, the IOC and IPC require that National Olympic Committees comply with the Code. Similarly, the Code requires that the rules of IFs

include the requirement that their associated national federations be compliant, and enforce the rules.

In Australia, NSOs must also demonstrate Code compliance as a precondition for government recognition and eligibility for funding through the ASC.

2.6 ACCREDITED AND APPROVED LABORATORIES

Under the Code, an ADRV for the presence of a substance can only be established if the test is performed by a WADA-accredited laboratory. Accreditation requires adherence to the criteria established in the International Standard for Laboratories and the standards established for the production of valid test results and evidentiary data.

The Australian Sports Drug Testing Laboratory (ASDTL) is Australia's only WADA-accredited laboratory. It is currently administered by the National Measurement Institute – part of the Department of Industry, Innovation and Science. ASADA is required under Australian Government policy to use the ASDTL for analysis of the vast majority of samples it collects.

The International Standard for Laboratories sets out separately the processes for WADA-approved laboratories to test blood samples for the Athlete Biological Passport Program. This process is less complex than accreditation.

404 *World Anti-Doping Code*, World Anti-Doping Agency (effective as of 1 January 2015) a. 8.
405 *Op. cit.*, a. 18 and 19.

3. AUSTRALIA'S ANTI-DOPING ARRANGEMENTS

The National Integrity of Sport Unit (NISU) in the Department of Health is responsible for ensuring Australia meets its obligations under the UNESCO Convention, including through the adoption of measures at a national level consistent with the principles of the Code.⁴⁰⁶

3.1 THE NATIONAL ANTI-DOPING FRAMEWORK

To align Australia's domestic anti-doping efforts and ensure a consistent, nationally coordinated approach to meeting Australia's anti-doping obligations, the National Anti-Doping Framework (NADF) was developed and first agreed by all Australian governments in 2007. While the Framework is non-binding, it identifies areas for cooperation between the Australian and state and territory governments, and outlines a set of agreed principles by which this can be achieved.

The NADF also outlines the roles and responsibilities of relevant government and sport sector stakeholders.

3.2 THE AUSTRALIAN SPORTS ANTI-DOPING AUTHORITY

The Australian Sports Anti-Doping Authority (ASADA) is the focal point for the Australian Government's efforts against doping in sport.

ASADA's powers and functions are specified under the *Australian Sports Anti-Doping Authority Act 2006* (ASADA Act) and the Australian Sports Anti-Doping Authority Regulations 2006 (the Regulations), including the National Anti-Doping (NAD) Scheme. The NAD Scheme underpins ASADA's implementation of a coordinated Code-compliant anti-doping program.

The NAD Scheme is set out in detail at Schedule 1 to the ASADA Regulations and outlines, among other things: the ADRV process; the anti-doping rules; the powers of the ASADA CEO; and the requirements of NSOs (for the purposes of the ASADA Act, these are termed 'sporting administration bodies').

ASADA's stated purpose is to protect the health of Australian athletes and the integrity of Australian sport through engagement, deterrence, detection and enforcement activities aimed at minimising the

risk of doping.⁴⁰⁷ ASADA does this through working closely with sports, athletes, support personnel and law-enforcement bodies in:

- designing and delivering education and communication programs
- detecting and managing ADRVs, from athlete testing to managing and presenting cases at hearings
- collecting and analysing anti-doping intelligence, and conducting investigations into possible ADRVs
- monitoring and reporting on sports' compliance with anti-doping policies
- supporting athletes to meet anti-doping obligations.

ASADA also collaborates with WADA, overseas anti-doping organisations and other stakeholders to further the Australian Government's efforts to harmonise anti-doping practices globally.

3.3 ANTI-DOPING RULE VIOLATION PANEL AND AUSTRALIAN SPORTS DRUG MEDICAL ADVISORY COMMITTEE

The ASADA Act establishes the Anti-Doping Rule Violation Panel (ADRVP) and the Australian Sports Drug Medical Advisory Committee (ASDMAC).

The role of the ADRVP is to undertake an independent review of the evidence collected by ASADA and make assertions as to whether an athlete or support person has committed a possible ADRV. If the ADRVP concludes there is sufficient evidence to make an assertion, that evidence is referred by ASADA to the NSO for decision. In this way, while the presence and operation of the ADRVP is not a requirement of the Code, it is intended to protect the integrity of the ADRV process.

406 International Convention against Doping in Sport, registered on 6 March 2007 under certificate 55048 dated of 15 March 2007 a. 3.
407 Department of Health, 'Australian Sports Anti-Doping Authority – Entity Resources and Planned Performance 2017-18' (updated 9 May 2017), <[http://www.health.gov.au/internet/budget/publishing.nsf/Content/2017-2018_Health_PBS_sup3/\\$File/2017-18_Health_PBS_4.06_ASADA.pdf](http://www.health.gov.au/internet/budget/publishing.nsf/Content/2017-2018_Health_PBS_sup3/$File/2017-18_Health_PBS_4.06_ASADA.pdf)>.

In August 2013, the ADRVP was given the extra responsibility of vetting disclosure notices issued by the ASADA Chief Executive Officer requiring a person to assist ASADA in an investigation.

The work of the ADRVP can be highly technical in nature. Under the Act, for appointment to the ADRVP, a person is required to have knowledge of, or experience in, one or more of the following fields: (i) sports medicine; (ii) clinical pharmacology; (iii) sports law; (iv) ethics; or (v) investigative practices or techniques.

The operation of ASDMAC is a direct requirement of the Code. ASDMAC is the specialist medical advisory committee authorised under the Act to consider, and where appropriate, approve 'therapeutic use exemption' (TUE) applications for the legitimate use of a prohibited substance or method to treat a medical condition. The TUE process preserves the fundamental right of an athlete to receive appropriate medical treatment when required without breaking anti-doping rules. ASDMAC also provides independent specialist medical advice to ASADA and other stakeholders, including athletes' physicians.

3.4 NATIONAL INTEGRITY OF SPORT UNIT

As well as ensuring that Australia meets its anti-doping obligations under the UNESCO Convention, the NISU provides an oversight function with regard to the ASADA Act, ASADA Regulations and the NAD Scheme, helping to ensure that while still an Australian Government agency, ASADA remains operationally independent and at arm's length from government, consistent with Code requirements. The NISU also provides overall coordination of and policy advice to the Australian Government on a range of sports integrity issues and initiatives.

3.5 AUSTRALIAN SPORTS COMMISSION

The ASC plays a key role through exercising its role in managing formal recognition and funding of sporting organisations. As a condition of ASC recognition and funding, the ASC requires NSOs to have an anti-doping policy approved by ASADA which meets the requirements of the Code and recognises ASADA's powers and functions under the ASADA Act and NAD Scheme.

The ASC also has a monitoring and regulatory role with respect to NSOs' compliance with the Code and terms of ASADA-approved anti-doping policies. Following consultation with ASADA, the ASC determines whether to withhold recognition and/or funding from noncompliant NSOs.

At the individual level, the ASC may require recipients of funding to repay grant funds in the event that the recipient has breached ASC or NSO anti-doping policies (de-funding athletes found to have committed an ADRV is a requirement of the Code).

3.6 OTHER AUSTRALIAN GOVERNMENT AGENCIES

Other Australian Government agencies also help to combat doping in Australia, and fulfil Australia's obligations under the UNESCO Convention including the requirement that government restrict the availability of prohibited substances or methods to athletes (except for legitimate medical purposes) including measures against trafficking.

Several government agencies play an important role in assisting ASADA to conduct anti-doping investigations through information sharing. These agencies include:

- Australian Federal Police
- Australian Electoral Commission
- Department of Immigration and Border Protection
- Therapeutic Goods Administration.

3.7 STATE AND TERRITORY GOVERNMENTS

State and territory governments may contribute to Australia's anti-doping effort by:

- requiring state sporting organisations to adopt ASADA-approved, Code-compliant anti-doping policies as a precondition of funding
- supporting anti-doping education at the subelite and community level
- supporting enforcement of sanctions – including withdrawal of funding from athletes and support personnel as appropriate in the case of ADRVs
- supporting cooperation and information sharing between ASADA and state/territory agencies, including sport-related and law-enforcement agencies.⁴⁰⁸

States and territories are also able to engage ASADA to conduct testing of athletes at the state level. In 2016–17, ASADA conducted a state-level program on behalf of the Western Australian Government.

408 Department of Health, 'National Anti-Doping Framework' (as agreed by Commonwealth, state and territory sport ministers on 1 October 2015), <[http://www.health.gov.au/internet/main/publishing.nsf/Content/40B6D35E1BE2A4FFCA257C310021CCFB/\\$File/National%20Anti-Doping%20Framework.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/40B6D35E1BE2A4FFCA257C310021CCFB/$File/National%20Anti-Doping%20Framework.pdf)>.

4. THE ANTI-DOPING RULE VIOLATION PROCESS

4.1 IDENTIFYING AN ANTI-DOPING RULE VIOLATION

In Australia, an allegation that an ADRV has occurred can arise from a positive test, a failure to observe anti-doping obligations such as whereabouts notifications, an investigation, or a combination of these actions.

ANALYTICAL FINDINGS

For an ADRV to be established from testing, the collection of a sample must be in accordance with WADA's International Standard for Testing and Investigations, and must be analysed by a WADA-accredited laboratory. If an athlete's sample records the presence of a prohibited substance (adverse analytical finding) and the athlete does not have a TUE, ASADA notifies the athlete about the details of the potential ADRV. The advice sent to the athlete is generally referred to as the 'A' sample notification.

The 'A' sample notification informs the athlete that the 'A' sample has returned a positive result. The notification also informs the athlete that the 'B' sample will be analysed, unless the athlete waives their right to the analysis. ASADA retains the right to analyse the 'B' sample even if the athlete waives their right.

Should the 'B' sample confirm the 'A' sample finding and depending on the substance involved, the athlete's sporting organisation may impose a provisional suspension on the athlete or the athlete may accept a voluntary provisional suspension.

INTELLIGENCE-LED INVESTIGATIONS

ASADA also investigates possible violations of anti-doping rules to determine whether there is non-analytical evidence of an ADRV. Essentially, ASADA needs to collect evidence sufficient to establish to the 'comfortable satisfaction' of a hearing panel that an ADRV has occurred.

The ASADA CEO has the authority to compel a person to assist ASADA's investigations. The ASADA Act permits the CEO to issue a 'disclosure notice' requiring a person to attend interviews with ASADA investigators (although a right not to self-incriminate exists) and/or provide documents or things that are

needed in order to administer the NAD Scheme.⁴⁰⁹ Before the CEO can issue a disclosure notice:

- the CEO must reasonably believe that the person has information, documents or things that may be relevant to the administration of the NAD Scheme
- at least three members of ADRVP must agree in writing that the CEO's belief is reasonable.⁴¹⁰

A disclosure notice can be issued in respect of any person; not just those captured by contractual agreements with and between sporting organisations.

The length of any investigation will be influenced by the unique circumstances and complexity of the case. For instance, the discovery of evidence may lead to further avenues of inquiry. However, any investigation is required to follow Australian Government Investigation Standards.

Upon completion of an investigation, all relevant evidence and material for potential ADRVs is referred to ASADA's legal team for review.

4.2 STATUTORY PROCESS FOR PROGRESSING POSSIBLE ANTI-DOPING RULE VIOLATIONS

The accused athlete or support has two opportunities to respond to an alleged ADRV before an assertion is made.⁴¹¹

Where the ASADA CEO forms a view that an ADRV may have occurred, the CEO writes to the person notifying them of a possible ADRV and inviting them to make a written submission to the ADRVP.⁴¹²

This is referred to as the 'show cause' notice and the recipient has 10 days to provide a written submission or to waive their right to do so. It is expected the submission be used to include information or evidence that may bring into question the validity of the ADRV.

At the end of this period, ASADA prepares the required material for the ADRVP. The ADRVP considers the matter and if it is satisfied there is a possible ADRV by the participant, it must request the CEO to notify the participant of this finding and give them 10 days to make a further submission.⁴¹³

409 Australian Sports Anti-Doping Authority Act 2006 (Cth) s. 13A.

410 Ibid.

411 Australian Sports Anti-Doping Authority Regulations 2006 (Cth) Schedule 1 (Division 4.2).

412 Op. cit., Schedule 1 (4.07A).

413 Op. cit., Schedule 1 (4.08).

At the end of the second submission period, ASADA presents all the material to the ADRVP to determine whether it remains satisfied that a possible ADRV has occurred. If the ADRVP remains satisfied, it makes an assertion of a possible ADRV.

The ADRVP then notifies the ASADA CEO, who then writes to the individual and to their sport notifying them of the assertion and any ASADA CEO recommendation on sanction.⁴¹⁴

Consistent with the Code, if the ADRVP makes an assertion that a possible ADRV has been committed, the individual concerned will receive an 'infraction notice' in accordance with their sport's anti-doping policy. Responsibility for this part of the process rests with the relevant sporting organisation; however, in many cases, the ASADA CEO will, by agreement with the sporting organisation, issue the individual an infraction notice on behalf of the sport.

The infraction notice will inform the individual of an asserted breach of the relevant sports anti-doping policy and will provide the individual with the opportunity to have a first-instance hearing before a sports tribunal or to accept the violation and sanction without a hearing. Athletes are generally provided a 14-day timeframe to respond to an infraction notice under their sport's anti-doping policy.

Athletes can waive their right to a hearing either expressly, or by not taking any action to initiate hearing proceedings within the specified period. In these cases, the sport will decide the appropriate sanction in accordance with its anti-doping policy and the sanction provisions in the Code.

ASADA estimates it takes a minimum of eight weeks for any matter to pass through the ADRVP's processes.

A decision by the ADRVP to make an assertion may be reviewed by the Administrative Appeals Tribunal (AAT). Appeals to the AAT lie only in relation to whether the ADRVP has complied with its legislative framework and whether there is sufficient evidence for a possible ADRV to have been committed. Appeals to the AAT do not cover issues such as possible sanctions under an individual sport's anti-doping policy or whether an actual ADRV has occurred. There is no set timeframe to resolve appeals to the AAT.⁴¹⁵

Since the ADRVP was established in 2010, six decisions have been reviewed by the AAT, with the decision of the ADRVP overturned on one occasion (with the AAT's decision quashed on appeal to the Full Court of the Federal Court). One person who was unsuccessful in the AAT appealed to the Federal Court, but subsequently discontinued the appeal.

414 Op. cit., Schedule 1(4.11).

415 Op. cit. 1(4.12).

5. HEARINGS AND APPEALS

If an athlete elects to have their matter heard, a hearing panel will be responsible for finding whether an ADRV has actually been committed and for imposing any relevant sanction under the sport's anti-doping policy. In Australia, NSOs may choose to set up their own internal tribunal to determine anti-doping matters (subject to approval from ASADA) or utilise the Court of Arbitration for Sport (CAS).

If the participant elects to go to a hearing in CAS or the sports tribunal, ASADA will usually present the case of an alleged ADRV. This is normally on behalf of the sport, but a sport may appear and put submissions that are different to those of ASADA, particularly in relation to the appropriate sanction.

5.1 EXISTING SPORTS TRIBUNALS

Arrangements for individual sports are outlined in their anti-doping policies. Of the approximately 100 sporting organisations in Australia that have anti-doping policies, there are six sports in Australia that do not use CAS for first-instance hearings (Australian Football League, Rugby Australia, Cricket Australia, Football Federation Australia, National Rugby League and Tennis Australia) and instead use their own internal tribunals.

The sports tribunal is responsible for determining the matter and for imposing any relevant sanction under that sport's anti-doping policy. Depending on the sport's anti-doping policy and whether an athlete has waived their right to a hearing, athletes

may be able to appeal to their sport's appeals tribunal where it may exist) or CAS. Under Code provisions, international-level athletes have a right of appeal to CAS.

Consistent with the Code, sports anti-doping policies are required to afford WADA the right to appeal a decision made by a sports tribunal to CAS. This right to appeal exists to ensure anti-doping rules are applied consistently across the world. WADA is able to appeal, for example, when a local decision is manifestly inaccurate or sets a precedent that is inconsistent with the intent of the Code. WADA is currently involved in about 30 cases in various jurisdictions.

Table 5 gives further detail on sports tribunals based on the information provided by COMPPS (of which all six sports with their own tribunal arrangements are members). The hearing panels generally comprise legal experts, medical experts and former athletes. Each of the six sports has a right of appeal to CAS.

Table 5: Sport-run disciplinary and anti-doping tribunals in Australia

Hearing panel (first instance)		Appeals	Membership	Integrity framework
Australian Football League	Disciplinary Tribunal	Decisions of the Disciplinary Tribunal can be appealed to the Appeal Board. In doping matters, decisions of the Appeal Board can be appealed to CAS.	A Disciplinary Tribunal will be made up of a Chairman or Deputy Chairman (which must be senior members of the legal profession) and two other people chosen by the AFL General Counsel.	Australian Football League Anti-Doping Code
Rugby Australia	Judicial Committee	ARU Appeal Committee Decisions can be appealed to CAS.	The Judicial Committee is ordinarily comprised of three members, all of whom are independent of the ARU. The committee must include at least one senior legal practitioner and one experienced medical practitioner.	Code of Conduct Anti-Doping Code
Cricket Australia	Anti-Doping Tribunal	Decisions made by the Anti-Doping Tribunal can be appealed to CAS.	The Anti-Doping Tribunal comprises three independent panel members with legal expertise.	Code of Conduct Anti-Doping Code
Football Federation Australia	Disciplinary and Ethics Committee	Appeals are heard by the Disciplinary and Ethics Committee. Decisions of the Disciplinary and Ethics Committee can be appealed to the Appeal Committee. Any appeal from a decision of the FFA Appeal Committee must be solely and exclusively resolved by CAS.	The Disciplinary and Ethics Committee is comprised of legal professionals, sports physicians and ex-players. The Anti-Doping Tribunal must comprise a barrister or solicitor (Chair); medical practitioner or a second barrister or solicitor; and a prominent citizen, which may include a former athlete or a third person qualified as a barrister or solicitor.	Code of Conduct FFA Code of Conduct
National Rugby League	NRL Anti-Doping Tribunal	The NRL Appeals Committee determines appeals from all elements of the NRL Rules, with the exception of the NRL Anti-Doping Code. Determinations made by the NRL Anti-Doping Tribunal are appealable to CAS.	The NRL Anti-Doping Tribunal comprises the Chair, a medical member and a distinguished former player.	NRL Code of Conduct Anti-Doping Code
Tennis Australia	Tribunal	Appeals from the Tribunal are heard by CAS.	The Tribunal for each hearing is appointed by the board of directors and comprises a legal expert (Chair), a person with a thorough knowledge of tennis and one person with experience and skills suitable to the function of the Tribunal.	Tennis Australia Anti-Doping Policy

Source: Information provided by the Coalition of Major Professional and Participation Sports to the Review.

APPENDIX

C

DISPUTE RESOLUTION IN SPORT

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I. HEARINGS AND APPEALS

1.1 COURT OF ARBITRATION FOR SPORT

The Court of Arbitration for Sport (CAS) was created in 1984 by the IOC and is a private institution located in Lausanne, Switzerland, that facilitates the settlement of sports-related disputes through arbitration or mediation.⁴¹⁶

The CAS now sits under the administrative and financial authority of the International Council of Arbitration for Sport (ICAS), which was established to give CAS greater independence from the IOC. ICAS consists of 20 members who have the authority to amend the Code of Sports-Related Arbitration and establish the list of CAS arbitrators.

In line with the growth in the number of procedures conducted by the CAS each year, and to allow a constant turnover of arbitrators, ICAS reviews arbitrator lists every five years, focusing on geographic spread, gender, knowledge of the sports world and athlete representation.

This aims to ensure a balanced list of independent legal specialists equipped to meet the unique challenges of global sports arbitration and mediation.

CAS currently has nearly 300 arbitrators from 87 countries, including 26 Australian arbitrators. It also has a special football panel that consists of a separate list of arbitrators.⁴¹⁷

CAS PROCEDURES

The CAS is composed of two divisions: the Ordinary Arbitration Division and the Appeals Arbitration Division.

The Ordinary Arbitration Division constitutes panels whose responsibility is to resolve disputes submitted to the ordinary procedure, including first-instance anti-doping matters. The ordinary procedure lasts between six and 12 months.

The Appeals Arbitration Division constitutes panels whose responsibility is to resolve disputes concerning the decisions of federations, associations or other sports-related bodies so far as the statutes or regulations of the said bodies or a specific agreement provide. For the appeals procedure, an award must be delivered within three months after the transfer of the file to the panel.

The seat of CAS arbitration is in Switzerland; therefore, CAS arbitrations are subject to Swiss law. Although CAS arbitral awards are final and binding

on the parties, recourse to the Swiss Federal Tribunal is allowed on a limited number of grounds (essentially similar to judicial review).

COST

Part costs, including the CAS Court Office fee and a reasonable estimate of the costs of the arbitration, are payable at the start of proceedings. At the end of the proceedings, the CAS Court Office will determine the final amount of the cost of arbitration. Costs include:

- the CAS Court Office fee of CHF1,000 (about AU\$1300)
- the administrative costs of the CAS calculated in line with the CAS scale, which range from CHF100 to CHF25,000 (about AU\$130 to about AU\$33000) depending on the size of the disputed sum (in anti-doping matters, no sum of money is in dispute)
- arbitrator costs which range from CHF300 (about AU\$400) to CHF500 (about AU\$655) per hour depending on the size of the disputed sum (in anti-doping matters, no sum of money is in dispute)
- a contribution towards the expenses of the CAS
- arbitrator reimbursement for travel, accommodation and meals
- the costs of witnesses, experts and interpreters.

CONFIDENTIALITY

CAS arbitrators and mediators are bound by the duty of confidentiality, which is provided for in the Code.

Rule 43 of the Procedural Rules provides that Ordinary Division (first instance) awards shall not be made public unless all parties agree or the Division President so decides.⁴¹⁸

Rule 58, relating to appeal proceedings, states that the award, a summary and/or a press release setting forth the results of the proceedings shall be made public by CAS, unless both parties agree that they should remain confidential. In any event, the other elements of the case record remain confidential.

416 'Code of Sports-related Arbitration, in force from 1 January 2017 <http://www.tas-cas.org/fileadmin/user_upload/Code_2017_FINAL__en_.pdf>.

417 The Panel consulted with John Coates AC on 15 July 2017.

418 *Code of Sports-related Arbitration*, in force from 1 January 2017 <http://www.tas-cas.org/fileadmin/user_upload/Code_2017_FINAL__en_.pdf>.

2. INTERNATIONAL MODELS FOR THE CONDUCT OF HEARINGS

The Code is not prescriptive in relation to the conduct of first-instance anti-doping hearings, other than the requirement that anti-doping organisations with responsibility for results management shall provide, at a minimum, a fair hearing within a reasonable time by a fair and impartial hearing panel.⁴¹⁹

The principles underpinning the Code requirements are consistent with Article 6.1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and are principles generally accepted in international law.⁴²⁰ Additionally, Article 13 of the Code outlines processes to be applied in appeals processes.

Accordingly, it is largely left to jurisdictions to create and administer anti-doping (and other) tribunal processes customised to their circumstances. As a result, a range of sporting tribunal arrangements is in operation internationally.

In some countries, sports dispute resolution bodies have been established under the auspices of the respective NOC to hear disputes between national and/or regional sports organisations and affiliated persons. However, most countries with sports sectors comparable to Australia's operate sports dispute resolution systems with the following general features:

- there is a dedicated national 'first instance' sports dispute resolution tribunal, fully or partly funded by governments
- there are appellate bodies for appeals of first-instance tribunal decisions, also fully or partly funded by government
- use of the tribunal may either be mandatory (as in the case of Canada) or voluntary (as is the case in the United Kingdom and New Zealand)

- mediation and arbitration facilities are often provided as optional precursors to formal tribunal hearings
- a variety of sports integrity and dispute matters are heard by such resolution bodies, though ADRV disputes are generally heard by a specific anti-doping tribunal either within a single dispute resolution body or within a separate anti-doping body established under the respective national anti-doping framework.

2.1 JAPAN

The Japan Anti-Doping Agency (JADA) has no legislative power to administer the Japan Anti-Doping Code (JADC), rather Japanese national sporting federations (NFs) may commit to following the rules of the JADC. If a NF does not adopt the JADC, they may set up their own anti-doping processes. Sports such as baseball, golf and sumo wrestling do not operate under the JADA/JADC program. Conversely, all summer/winter Olympic sports and all other sports federations which participate in Olympic Council of Asia-sanctioned events are under JADA/JADC jurisdiction.⁴²¹

The sports dispute resolution body is the Japan Anti-Doping Disciplinary Panel (Disciplinary Panel), which is directly appointed by the Japan Sport Council (JSC), a quasigovernmental agency.⁴²² The Disciplinary Panel, which consists of members with legal expertise (Chair and Vice-Chairs), three members with medical expertise and three members with distinguished sporting

419 *World Anti-Doping Code*, World Anti-Doping Agency (effective as of 1 January 2015) a. 8.1.

420 *Op. cit.* comment to a. Article 8.1.

421 Prepared with the assistance of officials of the Japan Anti-Doping Agency.

422 Previously, members of the Disciplinary Panel were appointed by JADA but this was changed in 2015 to achieve a more independent and impartial decision-making process.

backgrounds⁴²³, has the authority to hear and determine all issues arising from any matter which is referred to it pursuant to the JADC. This includes the power to determine the consequences of an ADRV.

No decision by the Disciplinary Panel can be changed by any court, arbitrator, tribunal or other hearing body other than the Japan Sports Arbitration Agency (JSAA) or CAS for any reason, provided there has been no miscarriage of justice.⁴²⁴ The JSAA was established in 2003 by the Japan Olympic Committee, Japan Sport Association and Japan Para-Sports Association to provide arbitration and mediation services. To date, 42 awards have been rendered since the establishment of JSAA. The typical disputes arbitrated are the selections of athletes or disciplinary matters:

- 17 cases for selection of athletes
- 13 cases for disciplinary matters
- 12 others.

In terms of doping, the number of cases (appeals) heard by the JSAA are low, but are dealt with in line with the Code and the relevant case law of the CAS and sport arbitral panels around the world.

It takes about 70 to 80 days on average from the request for the arbitration to the arbitral award.

2.2 CANADA

The Canadian Centre for Ethics in Sport (CCES) is Canada's NADO. CCES is responsible for delivering a WADA Code-compliant anti-doping program in Canada, inclusive of testing, education and results management.

Canada operates a government-funded independent organisation established under legislation, the Sport Dispute Resolution Centre of Canada (SDRCC), which considers a range of sport disputes including:

- doping matters, under a dedicated Doping Tribunal operating under processes specified in the Canadian Anti-Doping Program
- other dispute matters, through the operation of an Ordinary Tribunal; including:
 - » contract disputes
 - » athlete carding
 - » team selection
 - » sports governance matters

Similar to the situation in Australia, all Code-compliant and government-funded national sport organisations must adopt the Canadian Anti-Doping Program. A key difference, however, is that the Canadian Anti-Doping Program also prescribes the process for the conduct and resolution of doping matters. This includes accessing the SDRCC Doping Tribunal (whereas, in Australia, the manner in which anti-doping matters are resolved is determined by each NSO through its anti-doping policy, subject to approval from ASADA).

A decision of the CCES or the Doping Tribunal may be appealed to the Doping Appeal Tribunal, which comprises three arbitrators who are constituted and administered by the SDRCC.

In 2016/17, the SDRCC Ordinary Tribunal received 30 new requests, dealing with issues such as team selection, athlete carding (selection of athletes to receive funding), contract disputes, discipline issues and governance matters. In the Doping Tribunal, 19 new ADRV assertions were filed, six of which were determined by an arbitral decision. The average time for the resolution of doping cases was 52 days.⁴²⁵

2.3 REPUBLIC OF IRELAND

The Republic of Ireland operates an independent, specialist sport dispute resolution service, Just Sport Ireland (JSI), which offers mediation and arbitration facilities for all sports dispute matters with the exception of doping matters, which are dealt under the National Anti-Doping Program administered by Sport Ireland.⁴²⁶

A decision of a JSI Arbitration Panel may be appealed to the CAS if the rules of the sporting organisation allow for such an appeal. Otherwise, the decision handed down by the JSI Arbitrator is final and binding (subject to the right of WADA to appeal).

Under Irish Anti-Doping Rules, ADRV hearings are referred to the Irish Sport Anti-Doping Disciplinary Panel (Disciplinary Panel) for adjudication.⁴²⁷

The Disciplinary Panel has the power to hear and determine all issues arising from any matter referred to it pursuant to the Rules. The Disciplinary Panel determines whether the person has committed a violation and, if so, what consequences should be imposed.

423 Japan Anti-Doping Agency, Japan Anti-Doping Code, Article 8.1.

424 Op. cit., Article 8.2.

425 Sport Dispute Resolution Centre of Canada, Report on the Operations of the SDRCC 2016–17, page 10.

426 Sport Ireland, 'Anti-Doping' (accessed 25 January 2018) <<http://www.sportireland.ie/Anti-Doping>>

427 The Irish Sports Council, '2015 Anti-Doping Rules' <<http://www.sportireland.ie/Anti-Doping/2015-Anti-Doping-Rules/>> a.Irish Anti-Doping Rules 2015, Article 8.2.1

The Disciplinary Panel comprises:

- the Chair and up to nine Vice-Chairs, each of whom is a solicitor or barrister not less than five years qualified or a retired Supreme Court or High Court judge
- up to 10 members each of whom is a registered medical practitioner
- up to 10 members each of whom is or was a sports administrator or an athlete.

For each case, a hearing panel comprising a Chair, one medical practitioner member and one sports administrator or athlete member is established. The appointed members have had no prior involvement with the case, except for the Chair, who may have heard an appeal on a decision to impose a provisional suspension.

A person is entitled to appeal a decision by the Disciplinary Panel. The appeal is heard by another three members from the panel, who are appointed by the Chair of the Disciplinary Panel.

A sporting organisation has the option to not sign up to the Disciplinary Panel but if they do not, it must be in an agreement with Sport Ireland, which outlines what the sport should have in place. Presently, all sports use the Disciplinary Panel except for the Gaelic Athletics Association.⁴²⁸

2.4 UNITED KINGDOM

In the United Kingdom, Sport Resolutions UK provides independent efficient and cost-effective arbitration and mediation services for sport.⁴²⁹

The use of Sport Resolutions UK is contingent on the parties agreeing to the referral – either specifically in an individual case, or through the acceptance of a constitution, rules or regulations which provide for such a reference. By submitting to this process, parties waive their right to any form of appeal, review or recourse to any state court or other judicial authority, subject to and applicable statutory or other rights.

A panel of arbitrator(s) is appointed in collaboration with the parties. Sport Resolutions UK acts as secretariat to the tribunal and all communication with the panel is made through the Sport Resolutions office. The chair of the panel holds a directions hearing (normally by telephone conference call) in which a timetable is set for filing

documents with the tribunal. The date, venue and length of the hearing are also set at this early stage.

Arbitrators are also assigned to thematic panels as follows:

- National Anti-Doping Panel (NADP)
- National Safeguarding Panel
- Football Panel
- Discipline and Integrity Panel
- Athlete Selection and Eligibility Panel
- Disability and Paralympic Panel

All panel members are required to demonstrate expertise in both dispute resolution and sport. Panel members offer a broad level of experience and specialisation across a full range of areas including discipline, anti-doping, selection, child welfare, personal injury, intellectual property, commercial, employment and professional negligence.

The NADP, administered by Sport Resolutions UK, is responsible for adjudicating anti-doping disputes in sport. The NADP is funded in part by the UK Government and operates independently of UK Anti-Doping. The service is available to athletes and governing bodies without charge.⁴³⁰

Like JSI, it serves as a 'national CAS' for the United Kingdom, with the majority of its enquiries and referrals coming from Olympic, Paralympic and high-performance sports.

2.5 NEW ZEALAND

New Zealand operates a sports dispute resolution body, the Sports Tribunal of New Zealand (STNZ). Use of the STNZ is voluntary. The *New Zealand Sports Anti-Doping Act 2006 Act* sets out the disputes the STNZ can hear, which include:

- anti-doping violations
- appeals against decisions made by an NSO or the New Zealand Olympic Committee (NZOC), so long as the rules of the NSO or NZOC specifically allow for an appeal to the STNZ in relation to that issue. Such appeals could include:
 - » appeals against disciplinary decisions
 - » appeals against not being selected for a New Zealand team or squad

428 Op. cit. a. 8.6 and advice received from Sport Ireland.

429 Global Arbitration Review: Sports Arbitration, 2017, [Globalarbitrationreview.com](http://globalarbitrationreview.com), <http://globalarbitrationreview.com/insight/the-european-middle-eastern-arbitration-review-2012/1036693/sports-arbitration#ftn_42>.

430 *National Anti-Doping Panel – Sport Resolutions*, 2017, [Sportresolutions.co.uk](http://sportresolutions.co.uk), <<https://www.sportresolutions.co.uk/services/national-anti-doping-panel>>.

- other sports-related disputes that all of the parties to the dispute agree to refer to the STNZ and that the STNZ agrees to hear
- matters referred to the STNZ by the board of Sport New Zealand.

The STNZ has the power to order mediation to take place if it considers it appropriate, but cannot order that a dispute must be resolved through mediation; rather, the parties have to agree on the outcome. Mediation assistance may be provided by the STNZ or an independent person. It is not available for anti-doping cases.

A recommendation from a 2015 review of the STNZ⁴³¹ to establish a specific sports mediation service for disputes before the STNZ and for disputes at a broader national level is currently being considered.

The STNZ has wide powers to inspect and examine documents, and can require witnesses to attend hearings and produce documents or other material for examination. It will hear evidence it considers appropriate and may take evidence under oath or affirmation. The proceedings are a form of inquiry, and the STNZ may conduct its own research to gather additional information and evidence.

When hearing a dispute, the tribunal is not bound by the dispute resolution procedures of the sport concerned but it must apply the rules and policies of the sport in regard to the subject of the dispute. For example, when it is alleged an athlete has committed an ADRV, the STNZ must follow the doping rules applying to that athlete's sport.

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APPENDIX C
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ATTACHMENT

1

TEMPLATE INTEGRITY POLICIES

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ANTI-MATCH-FIXING POLICY TEMPLATE

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NAME OF SPORT

NATIONAL POLICY ON MATCH-FIXING

I. INTRODUCTION

Outline the Sport's position on match-fixing here, with the below wording setting out what would be expected at a minimum.

- a. The Sport recognises that betting is a legitimate pursuit; however, illegal or fraudulent betting is not. Fraudulent betting on sport and the associated match-fixing is an emerging and critical issue globally, for sport, the betting industry and governments alike.
- b. The Sport and its Member Organisations have a major obligation to address the threat of match-fixing and the corruption that flows from that.
- c. The Sport and its Member Organisations have a zero tolerance for illegal gambling and match-fixing.
- d. The Sport will engage the necessary technical expertise to administer, monitor and enforce this Policy.
- e. The purpose of the National Policy on Match-Fixing is to:
 - i. protect and maintain the integrity of the Sport
 - ii. protect against any efforts to impact improperly the result of any match or event
 - iii. establish a uniform rule and consistent scheme of enforcement and penalties
 - iv. adhere to the National Policy on Match-Fixing in Sport as agreed by Australian governments on 10 June 2011.
- f. The conduct prohibited under this Policy may also be a criminal offence and/or a breach of other applicable laws or regulations. This Policy is intended to supplement such laws and regulations. It is not intended, and should not be interpreted, construed or applied, to prejudice or undermine in any way the application of such laws and regulations. Relevant Persons must comply with all applicable laws and regulations at all times.

2. APPLICATION

APPLICATION OF POLICY

- a. This Policy is made by the Board and is binding on all Relevant Persons. It may be amended from time to time by the Board.
- b. The Board may, in its sole discretion, delegate any or all of its powers under this Policy, including but not limited to the power to adopt, apply, monitor and enforce this Policy.
- c. By virtue of their ongoing membership, employment or other contractual relationship with the Sport, Relevant Persons are automatically bound by this Policy and required to comply with all of its provisions.

RELEVANT PERSONS

Outline those specific categories of people within the control of the Sport to whom the Policy will apply. The below list is intended as a guide, and any categories irrelevant to the Sport should be deleted.

- a. This Policy applies to any Relevant Person as defined from time to time by the Board. For clarity this includes, but is not limited to:
 - i. Player Agents

The applicability of the Policy to Player Agents by the Sport may depend on the accreditation of agents within the Sport. Where Player Agents are not accredited by the sport, it remains important that where possible, Player Agents be captured by the National Policy to further strengthen sport integrity. This may require consultation with the Players/Athletes' Association within the Sport.

- ii. Athletes
- iii. Coaches
- iv. Officials
- v. Personnel
- vi. Persons who hold governance positions with the Sport or its Member Organisations
- vii. Selectors
- viii. Squad Support Staff.

EDUCATION

- a. All Relevant Persons must complete appropriate education and training programs as directed by the Sport from time to time.
- b. All Relevant Persons as at the commencement of this Policy must undertake the Sport's education program.
- c. All persons who become Relevant Persons after the commencement of this Policy must undertake the Sport's education program as part of their induction:
 - i. prior to competing in any Event or Competition; or
 - ii. within two months of commencing employment (whether paid or voluntary).

As a minimum, the Sport should have all Relevant Persons undertake the online education program available at elearning.sport.gov.au.

CODE OF CONDUCT

- a. In addition to this Policy, all Relevant Persons are bound by the Sport's Code of Conduct (see Annexure D), as amended from time to time, which is underpinned by the following principles:
 - » Be Smart: know the rules
 - » Be Safe: never bet on your sport
 - » Be Careful: never share sensitive information
 - » Be Clean: never fix an event
 - » Be Open: tell someone if you are approached

3. PROHIBITED CONDUCT

The below Prohibited Conduct represents the minimum standard expected of sporting organisations. The Sport may in its discretion and subject to law, prohibit such other conduct it deems appropriate. For example, prohibiting the use of mobile telephones by Relevant Persons during an Event.

- a. A Relevant Person to whom this Policy applies must not directly or indirectly, alone or in conjunction with another or others breach this Policy or the Sport's Code of Conduct by:
 - i. betting, gambling or entering into any other form of financial speculation on any Competition or on any Event connected with the Sport; or
 - ii. participating (whether by act or omission) in match-fixing by:
 - A. deliberately underperforming or 'tanking' as part of an arrangement relating to betting on the outcome of any contingency within a Competition or Event
 - B. deliberately fixing, or exerting any undue influence on, any occurrence within any Competition or Event as part of an arrangement relating to betting on the outcome of any contingency within a Competition or Event
 - C. inducing or encouraging any Relevant Person to deliberately underperform as part of an arrangement relating to betting on the outcome of any Competition or Event
 - D. providing Inside Information that is considered to be information not publicly known such as Team or its members configuration (including, without limitation, the Team's actual or likely composition, the form of individual athlete or tactics) other than in connection with bona fide media interviews and commitments
 - E. ensuring that a particular incident, that is the subject of a bet, occurs
 - F. providing or receiving any gift, payment or benefit that might reasonably be expected to bring the Relevant Person or the Sport into disrepute; or
 - G. engaging in conduct that relates directly or indirectly to any of the conduct described in Clauses 3 a(ii)(A) to (F) above and is prejudicial to the interests of the Sport or which bring a Relevant Person or the Sport into disrepute.
- b. Any attempt or any agreement to act in a manner that would culminate in Prohibited Conduct shall be treated as if the relevant Prohibited Conduct had occurred, whether or not the Prohibited Conduct actually occurred as a result of the attempt or agreement to act.
- c. If a Relevant Person knowingly assists or is a party to 'covering up' Prohibited Conduct, that Relevant Person will be treated as having engaged in the Prohibited Conduct personally.
- d. Nothing in this section prevents the Board from enforcing any other Rules and Regulations or referring any Prohibited Conduct to a relevant law-enforcement agency.

The Sport should also ensure all Relevant Persons are aware of the criminal offences relating to match-fixing, which may carry up to a maximum sentence of 10 years imprisonment.

4. REPORTING PROCESS

Ensure that as a minimum a Relevant Person:

- must adhere to clause 4 (a) below
- is required to cooperate with investigations.

Outline who the above matters are to be reported to, and the process and timeframe for reporting.

- a. A Relevant Person to whom this policy applies must promptly notify the Chief Executive Officer if he or she:
 - i. is interviewed as a suspect, charged, or arrested by police in respect of conduct that would amount to an allegation of Prohibited Conduct under this Policy
 - ii. is approached by another person to engage in conduct that is Prohibited Conduct
 - iii. knows or reasonably suspects that another person has engaged in conduct, or been approached to engage in conduct that is Prohibited Conduct
 - iv. has received, or is aware or reasonably suspects that another person has received, actual or implied threats of any nature in relation to past or proposed conduct that is Prohibited Conduct.
- b. If a Relevant Person wishes to report the Chief Executive Officer for involvement in conduct that is Prohibited Conduct under this Policy then the Relevant Person to which this Section 4 applies may report the conduct to the Chair of the Board.
- c. Notification by a Relevant Person under this Section 4 can be made verbally or in writing in the discretion of the Relevant Person and may be made confidentially if there is a genuine concern of reprisal. However, the Chief Executive Officer (or the Chair of the Board as the case may be) must record the fact of the reporting of Prohibited Conduct and particulars of the alleged Prohibited Conduct in writing within 48 hours of the report from the Relevant Person for presentation to the Board.
- d. Any report by a Relevant Person under this Section 4 will be dealt with confidentially by the Sport unless disclosure is otherwise required or permitted under this Policy, by law, or if the allegation of the Prohibited Conduct is already in the public domain.
- e. A Relevant Person has a continuing obligation to report any new knowledge or suspicion regarding any conduct that may amount to Prohibited Conduct under this Policy, even if the Relevant Person's prior knowledge or suspicion has already been reported.

5. INVESTIGATIONS

This section should be amended to suit the individual sports requirements and should include an outline of:

- the process to undertake an investigation when the Sport suspects or is aware of a breach including an outline of the process to establish a Hearing Panel and nomination of panel members
- arrangements for protecting confidentiality during the investigation and disciplinary process
- the process for referring alleged breaches to law-enforcement agencies for criminal investigations.

ALLEGATIONS OF PROHIBITED CONDUCT

If the Board or Chief Executive Officer receives a report or information that a Relevant Person has allegedly breached this Policy including by engaging in actual or suspected Prohibited Conduct, the Board must, as soon as reasonably practicable refer that report or information and any documentary or other evidence that is available to it in relation to the alleged Prohibited Conduct by the Alleged Offender to the Hearing Panel.

If the Board or Chief Executive Officer has referred to the Hearing Panel a report or information that an Alleged Offender has allegedly breached this Policy including by engaging in actual or suspected Prohibited Conduct, the Board may, in its discretion and pending determination by the Hearing Panel suspend the Alleged Offender from any Event or activities sanctioned by the Sport or a Member Organisation.

Nothing in this section prevents the Board or Chief Executive Officer from enforcing any other Rules and Regulations or referring any Prohibited Conduct to a relevant law-enforcement agency.

CONFIDENTIALITY AND REPORTING

- a. To maintain the confidentiality of the process, no parties will publicly announce, comment on or confirm any of its investigative or subsequent hearings or appeals activities. Notwithstanding this provision, however, a general description of a process that may be instigated under this policy is permissible.
- b. The Sport must not disclose any specific facts of an allegation of Prohibited Conduct or breach of this Policy.
- c. The identity of a Relevant Person against whom a finding of Prohibited Conduct is made may only be publicly disclosed after the Hearing Panel has notified the Relevant Person, the Sport and any other interested party of its decision. Such disclosure will be by way of an official release by the Sport.
- d. Where any public announcement may be considered detrimental to the wellbeing of a Relevant Person, the Board will determine the most appropriate course of action in its sole discretion based on the circumstances of the Relevant Person.
- e. All parties must maintain all information received in the course of any report, notice, hearing or appeal (other than a notice of decision by the Hearing Panel or an appeal tribunal) in relation to an allegation of conduct that is Prohibited Conduct as strictly confidential.
- f. Clauses 5.2 a) to e) do not apply if the disclosure is required by law or the Sport determines to refer information to a law-enforcement agency.

CRIMINAL OFFENCES

Offences that occur overseas will be subject to the law of the country the competition is occurring in. However the Sport may still apply sanctions under the rules of their sport.

- a. Any alleged Prohibited Conduct by an Alleged Offender which is considered by the Board or Chief Executive Officer as a prima facie unlawful offence will be reported to the police force in the jurisdiction the offence is alleged to have occurred and/or the Australian Federal Police.

PRIVILEGE

- a. Notwithstanding anything else in this Policy, a Relevant Person who is interviewed under suspicion, charged or arrested by a law-enforcement agency in respect of a criminal offence that is, or may be considered to be conduct that is Prohibited Conduct under this Policy shall not be required to produce any information, give any evidence or make any statement to the Board if they establish that to do so would breach any privilege against self-incrimination, or legal professional privilege.
- b. Clause 5.4 a) does not limit the Board from enforcing any other Rules and Regulations.

The effect of this clause is that while a Relevant Person subject to a criminal investigation does not need to cooperate with an investigation by the Sport, the Sport is still entitled to complete its investigation and administer any sanction it is entitled to under this Policy.

6. DISCIPLINARY PROCESS

The Sport will need to set out a disciplinary process, or refer to the existing disciplinary framework of the Sport, within this section of the Policy.

An example disciplinary process is contained in Annexure E. The NISU can provide assistance if required.

At a minimum, the disciplinary process should:

1. allow all Alleged Offenders to be afforded the right to a timely, fair and impartial hearing
2. allow information disclosed during a hearing process to be used for further investigations
3. outline the process for the hearing panel to refer a matter to the disciplinary panel if relevant
4. afford the Alleged Offender a right to appeal a decision to an appeals tribunal:
 - a. where the decision of the Hearing Panel is wrong having regard to the application of this Policy or the Code of Conduct
 - b. where new evidence has become available
 - c. where natural justice has been denied; or
 - d. in respect of the penalty imposed.

7. SANCTIONS

PENALTIES

Outline minimum and robust sanctions that reflect the severity of the breach. These may include disqualification of results, suspension, ban, financial penalty and public disclosure.

The Sport will need to set out specific penalties, or refer to penalties in the existing disciplinary framework of the Sport, in this section of the Policy.

An example set of penalties is set out in Annexure E. The NISU can provide assistance if required.

8. INFORMATION SHARING

It needs to be outlined here that the Sport may share personal information of Relevant Persons with Betting Operators, law-enforcement agencies, government agencies and/or other sporting organisations to prevent and investigate match-fixing incidents.

However, it is important the Sport complies with all legal obligations under the *Privacy Act 1988* (Cth) in sharing information.

MONITORING BY BETTING OPERATORS

- a. Relevant Persons to whom this Policy applies must disclose information to the Sport of all their business interests, and connections with Betting Operators.
- b. The Sport will work with Betting Operators to help ensure the ongoing integrity of the Competitions and Events played under the auspices of the Sport and Authorised Providers.
- c. Betting Operators will monitor and conduct regular audits of its databases and records to monitor the incidents of suspicious betting transactions (including single or multiple betting transactions or market fluctuations) that may indicate or tend to indicate that Relevant Persons have engaged in conduct that is Prohibited Conduct under this Policy.
- d. In order to enable the Betting Operator to conduct such audits, the Sport may, from time to time and subject to any terms and conditions imposed by the Sport (including in relation to confidentiality and privacy), provide to Betting Operators details of Relevant Persons who are precluded by virtue of this Policy from engaging in Prohibited Conduct.
- e. Betting Operators must provide the Board with regular written reports on incidents of suspicious betting transactions (including single or multiple betting transactions or market fluctuations) that may indicate or tend to indicate that Relevant Persons have engaged in conduct that is Prohibited Conduct under this Policy.
- f. All requests for information or provision of information by the Sport or a Betting Operator shall be kept strictly confidential and shall not be divulged to any third party or otherwise made use of except where required by law or where information is already in the public domain other than as a result of a breach of this Policy.

SPONSORSHIP

- a. The Sport acknowledges that betting is a legal activity, and recognises that Betting Operators may wish to enter Commercial Partnerships to promote their business.
- b. The Sport may enter Commercial Partnerships with Betting Operators from time to time, subject to any applicable legislative requirements.
- c. A Member Organisation or any Team may enter into a Commercial Partnership with a Betting Operator with the written consent of the Sport. Such consent may be withheld at the discretion of the Sport and specifically where the proposed Commercial Partnership:
 - i. conflicts with an existing Commercial Partnership held between the Sport and a Betting Operator(s); and/or
 - ii. is with a Betting Operator with whom the Sport has not entered into an integrity agreement as required under the National Policy on Match-Fixing in Sport and recognised by the applicable state gambling regulator.
- d. Subject to clause 8.2 c) above, a Relevant Person shall not be permitted to:
 - i. enter into any form of Commercial Partnership with a Betting Operator; or
 - ii. promote a Betting Operator; or
 - iii. have any form of commercial relationship with a Betting Operator.

9. INTERPRETATIONS AND DEFINITIONS

INTERPRETATION

- a. Headings used in this Policy are for convenience only and shall not be deemed part of the substance of this Policy or to affect in any way the language of the provisions to which they refer.
- b. Words in the singular include the plural and vice versa.
- c. Reference to 'including' and similar words are not words of limitation.
- d. Words importing a gender include any other gender.
- e. A reference to a clause is a reference to a clause or subclause of this Policy.
- f. Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- g. In the event any provision of this Policy is determined invalid or unenforceable, the remaining provisions shall not be affected. This Policy shall not fail because any part of this Policy is held invalid.
- h. Except as otherwise stated herein, failure to exercise or enforce any right conferred by this Policy shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof or of any other right on any other occasion.

DEFINITIONS

In this Policy unless the context requires otherwise these words mean:

- a. **Alleged Offender** means a person accused of engaging in Prohibited Conduct under this Policy, prior to a determination by the Hearing Panel.
- b. **Athlete** means any person identified within the Sport's athlete framework (Annexure A) as amended and updated from time to time.
- c. **Authorised Providers** means the Sport's Member Organisations, Affiliates, or other organisations from time to time that conduct Events (for example the Australian Commonwealth Games Association or a private event management company operating an Event on behalf of the Sport).
- d. **Betting Operator** means any company or other undertaking that promotes, brokers, arranges or conducts any form of Betting activity in relation to the Sport
- e. **Coaches** means any person described in the Sport's coach framework (Annexure B) as amended and updated from time to time.
- f. **Competition** means a <insert sport> contest, event or activity measuring performance against an opponent, oneself or the environment either once off or as part of a series.
- g. **Event** means a one-off Competition, or series of individual Competitions conducted by the Sport or an Authorised Provider (for example International Test Matches, National Championships, or domestic leagues)
- h. **Hearing Panel** means the Panel appointed by the Board to hear and determine allegations of Prohibited Conduct.
- i. **Inside Information** means any information relating to any Competition or Event that a Relevant Person possesses by virtue of his or position within the Sport. Such information includes, but is not limited to, factual information regarding the competitors in the Competition or Event, tactical considerations or any other aspect of the Competition or Event but does not include such information that is already published or a matter of public record, readily acquired by an interested member of the public, or disclosed according to the rules and regulations governing the relevant Competition or Event.
- j. **Member Organisations** means those entities recognised by the Sport's constitution as its member organisations.
- k. **National Policy on Match-Fixing in Sport** means the Policy endorsed, on 10 June 2011, by all Australian sports ministers on behalf of their governments, with the aim of protecting the integrity of Australian sport.
- l. **Official** means any person identified within the Sport's Officials Accreditation Framework (Annexure C) as amended and updated from time to time.
- m. **The Sport** means <insert name of national sporting organisation> Limited/Inc. <delete as appropriate>.
- n. <insert sport> means the sport and game of <insert name of sport> as determined by the Sport and the International Association with such variations as may be recognised from time to time.
- o. **Policy** means the Sport's National Policy on Match-Fixing as amended from time to time.
- p. **Prohibited Conduct** means conduct in breach of section 3 of this Policy.
- q. **Relevant Person** means any of the persons identified in Clause 2.2, or any other person involved in the organisation administration or promotion of <insert sport>, whose involvement in gambling would bring <insert sport> into disrepute.
- r. **Team** means a collection of Athletes and includes a national representative team, National Institute Network Teams, including the Australian Institute of Sport and state/territory institutes/academies' of sport or Member Organisation team that competes in Competitions or Events.

10. ANNEXURE A – ATHLETE FRAMEWORK

List here all classes of athlete to whom the Policy applies.

This should include any athlete that competes:

- in professional domestic leagues
- at international benchmark competitions or events (such as world championships, world cups or one-off international competitions)
- at any other competition or event that attracts or is likely to attract a betting market (this would include competitions and events that have no domestic betting markets but attract overseas betting markets).

This framework should be reviewed regularly and amended as appropriate.

11. ANNEXURE B – COACHES FRAMEWORK

List here all classes of coaches to whom the Policy applies.

This should include any coach, including head coaches and assistant coaches of Athletes and Teams:

- in professional domestic leagues
- at international benchmark competitions or events (such as world championships, world cups or one-off international competitions)
- at any other competition or event that attracts or is likely to attract a betting market (this would include competitions and events that have no domestic betting markets but attract overseas betting markets).

This framework should be reviewed regularly and amended as appropriate.

12. ANNEXURE C – OFFICIALS FRAMEWORK

List here all classes of officials to whom the Policy applies.

This should include any officials, including umpires and technical officials that officiate:

- in professional domestic leagues
- at international benchmark competitions or events (such as world championships, world cups or one-off international competitions)
- at any other competition or event that attracts or is likely to attract a betting market (this would include competitions and events that have no domestic betting markets but attract overseas betting markets).

This framework should be reviewed regularly and amended as appropriate.

13. ANNEXURE D- CODE OF CONDUCT

NAME OF SPORT

("the Sport")

Code of Conduct

ANTI-MATCH-FIXING CODE OF CONDUCT

CODE OF CONDUCT

PREAMBLE

The Sport recognises that betting is a legitimate pursuit, ; however, illegal or fraudulent betting is not. Fraudulent betting on sport and the associated match-fixing is an emerging and critical issue globally, for sport, the betting industry and governments alike.

Accordingly, the Sport and its Member Organisations have a major obligation to address the threat of Match-Fixing and the corruption that flows from that.

The Sport and its Member Organisations have a zero tolerance for illegal gambling and Match-Fixing.

The Sport has developed a National Policy on Match-Fixing to:

- Protect and maintain the integrity of the Sport
- Protect against any efforts to impact improperly the result of any match.
- Establish a uniform rule and consistent scheme of enforcement and penalties.
- Adhere to the National Policy on Match-Fixing in Sport as agreed by Australian Governments on 10 June 2011.

A copy of the National Policy can be obtained from the Sport upon request, and is available on the Sport's website.

The Sport will engage necessary technical expertise to administer, monitor and enforce this Policy.

APPLICATION

The National Policy, as amended from time to time, includes a defined list of Relevant Persons to whom this Code of Conduct applies.

SAMPLE CODE OF CONDUCT PRINCIPLES/ RULES OF BEHAVIOUR

This Code of Conduct sets out the guiding principles for all Relevant Persons on the issues surrounding the integrity of sport and betting.

GUIDING PRINCIPLES

4. Be Smart: know the rules
5. Be Safe: never bet on your sport
6. Be Careful: never share sensitive information
7. Be Clean: never fix an event
8. Be Open: tell someone if you are approached

1. BE SMART: KNOW THE RULES

Find out the sports betting integrity rules of the Sport (set out in the Sports National Policy) prior to each season, so that you are aware of the Sport's most recent position regarding betting.

If you break the rules, you will be caught and risk severe punishments including a potential lifetime ban from your sport and even being subject to a criminal investigation and prosecution.

2. BE SAFE: NEVER BET ON YOUR SPORT

Never bet on yourself, your opponent or your sport. If you, or anyone in your entourage (coach, friend, family members etc.), bet on yourself, your opponent or your sport you risk being severely sanctioned. It is best to play safe and never bet on any events within your sport including:

- never betting or gambling on your own matches or any competitions in your sport; including betting on yourself or your team to win, lose or draw as well as any of the different spot bets (such as first goal scorer, MVP etc.);
- never instructing, encouraging or facilitating any other party to bet on sports you are participating in;
- never ensuring the occurrence of a particular incident, which is the subject of a bet and for which you expect to receive or have received any reward; and
- never giving or receiving any gift, payment or other benefit in circumstances that might reasonably be expected to bring you or your sport into disrepute.

3. BE CAREFUL: NEVER SHARE SENSITIVE INFORMATION

As a Relevant Person you will have access to information that is not available to the general public, such as knowing that team mate is injured or that the coach is putting out a weakened side. This is considered sensitive, privileged or inside information. This information could be sought by people who would then use that knowledge to secure an unfair advantage to make a financial gain.

There is nothing wrong with you having sensitive information; it is what you do with it that matters. Most Relevant Persons know that they should not discuss important information with anyone outside of their club, team or coaching staff (with or without reward) where the Relevant Person might reasonably be expected to know that its disclosure could be used in relation to betting.

4. BE CLEAN: NEVER FIX AN EVENT

Play fairly, honestly and never fix an event or part of an event. Whatever the reason, do not make any attempt to adversely influence the natural course of an event or competition, or part of an event or competition. Sporting contests must always be an honest test of skill and ability and the results must remain uncertain. Fixing an event or competition, or part of an event or competition goes against the rules and ethics of sport and when caught, you may receive a fine, suspension, lifetime ban from your sport, and/or even a criminal prosecution.

Do not put yourself at risk by following these simple principles:

- Always perform to the best of your abilities.
- Never accept to fix a match. Say no immediately. Do not let yourself be manipulated - unscrupulous individuals might try to develop a relationship with you built on favours or fears that they will then try to exploit for their benefit in possibly fixing an event. This can include the offer of gifts, money and support.
- Seek treatment for addictions and avoid running up debts as this may be a trigger for unscrupulous individuals to target you to fix competitions. Get help before things get out of control.

5. BE OPEN: TELL SOMEONE IF YOU ARE APPROACHED

If you hear something suspicious or if anyone approaches you to ask about fixing any part of a match then you must tell someone at the Sport (this person is stipulated in the National Policy) straight away. If someone offers you money or favours for sensitive information then you should also inform the person specified above. Any threats or suspicions of corrupt behaviour should always be reported. The police and national laws are there to protect you. The Sport has developed the National Policy and the procedures contained in it to help.

14. ANNEXURE E- SAMPLE CLAUSES

DISCIPLINARY PROCESS

6.1 COMMENCEMENT OF PROCEEDINGS

- a. The Hearing Panel must comprise three persons independent of the Sport and with appropriate skills and experience appointed by the Board for such time and for such purposes as the Board thinks fit. The Board will appoint one of the members of the Hearing Panel to act as its Secretary.

The independence and skill set of Hearings Panel members is important in giving the process credibility and reducing the risk of appeals.

- b. On receipt of a referral from the Board of an actual or suspected contravention of this Policy by an Alleged Offender, the Secretary of the Hearing Panel must issue a notice to the Alleged Offender detailing:
 - i. the alleged offence including details of when and where it is alleged to have occurred
 - ii. the date, time and place for the proposed hearing of the alleged offence which shall be as soon as reasonably practicable after the Alleged Offender receives the Notice;
 - iii. information advising the Alleged Offender of their rights and format of proceedings;
 - iv. the potential penalties in the event that the Hearing Panel makes a finding that the Alleged Offender engaged in the Prohibited Conduct;
 - v. a copy of the referral from the Board and any documentary or other evidence that was submitted to the Hearing Panel by the Board in relation to the alleged Prohibited Conduct by the Alleged Offender.

("the Notice")

- c. Within fourteen business days of the date of the Notice, the Alleged Offender must notify the Hearing Panel in writing of:
 - i. whether or not he or she wishes to contest the allegations; and
 - ii. if the Alleged Offender does not wish to contest the allegations and accedes to the imposition of penalty, he or she may so notify the Hearing Panel in writing, in which case no hearing shall be conducted and the Hearing Panel will remit the matter to the Board for the Board's consideration and imposition of a penalty; or
 - iii. if the Alleged Offender does not wish to contest the allegations, but wishes to make submissions disputing and/or seeking to mitigate the penalty, he or she may must notify the Hearing Panel either:
 - A. that he or she wishes to make those submissions at a hearing before the Hearing Panel, in which case, the Hearing will proceed in accordance with clause 6.2 below; or
 - B. that he or she wishes to make those submission in writing, in which case the Hearing Panel will, on receipt of those submissions, remit the matter to the Board for the Board's consideration and imposition of a penalty (giving due consideration to those written submissions)
 - iv. If the Alleged Offender does not admit or denies the alleged Prohibited Conduct and notifies the Hearing Panel that he or she wishes to contest the allegations, the Alleged Offender, is, by that notice, taken to have consented to the determination of the allegations in accordance with the procedure outlined in this Policy, and if the Hearing Panel finds that the Alleged Offender breached this Policy including by engaging in Prohibited Conduct, to the imposition of a penalty.

- d. If the Alleged Offender fails to respond to the Notice within fourteen business days of the date of the Notice, the Alleged Offender shall be deemed to have:
 - i. waived their entitlement to a hearing in accordance with this Policy; and
 - ii. admitted to the Prohibited Conduct specified in the Notice; and
 - iii. acceded to the imposition of a penalty by the Board; and
 - iv. the Hearing Panel will remit the Alleged Offender's Prohibited Conduct to the Board, informing the Board, by notice in writing, of the Alleged Offender's failure to respond to the Notice and requesting the Board to impose a penalty in the Board's Discretion in accordance with this section.
- e. Notwithstanding any of the above, an Alleged Offender shall be entitled at any stage to admit they have engaged in the Prohibited Conduct specified in the Notice and to accede to penalties determined by the Board
- f. Personnel covered by the Sport or a Member Organisation Employee Collective Agreement will be subject to relevant Clauses, including Dispute, Hearings, Appeals and Termination Clauses contained in such Agreement, and if applicable the *Fair Work Act 2009 (Australia)*.

6.2 PROCEDURE OF THE HEARING PANEL

- a. This section applies if the Alleged Offender contests the allegation(s) that he or she has engaged in the Prohibited Conduct specified in the Notice, and there is a hearing of the allegations by the Hearing Panel.
- b. The purpose of the hearing shall be to determine whether the Alleged Offender has engaged in the Prohibited Conduct specified in the Notice and, if the Hearing Panel considers that the Alleged Offender has engaged in Prohibited Conduct, for the imposition any penalty in the Hearing Panel's discretion.
- c. The Hearing Panel may conduct the hearing as it sees fit and, in particular, shall not be bound by the rules of evidence or unnecessary formality. The Hearing Panel must determine matters in accordance with the principles of procedural fairness, such as a hearing appropriate to the circumstances; lack of bias; inquiry into matters in dispute; and evidence to support a decision.
- d. The hearing shall be inquisitorial in nature and the Hearing Panel may call such evidence as it thinks fit in its discretion and all Relevant Persons subject to this Policy must, if requested to do so by the Hearing Panel, provide such evidence as they are able.

This allows the Hearing Panel to be actively involved in the hearing (i.e. asking questions of the Alleged Offender and the Sport).

- e. The hearing must be conducted with as much expedition as a proper consideration of the matters permit. However, the Hearing Panel may adjourn the proceedings for such reasonable time as it considers it necessary.
- f. Notwithstanding the above, the Alleged Offender:
 - i. is permitted to be represented at the hearing (at their own expense);
 - ii. may call and question witnesses;
 - iii. has the right to address the Hearing Panel to make their case; and
 - iv. is permitted to provide written submissions for consideration by the Hearing Panel (instead of or as well as appearing in person). If the Alleged Offender provides any written submissions, the Hearing Panel must consider those submissions in its deliberations.
- g. The hearing shall be closed to the public. Only persons with a legitimate interest in the hearing will be permitted to attend. This will be at the sole discretion of the Hearing Panel.
- h. The Hearing Panel must determine whether the Alleged Offender engaged in the Prohibited Conduct on the balance of probabilities.

- i. The decision of the Hearing Panel shall be a majority decision and must be recorded in writing. The decision must, at a minimum, set out and explain:
 - i. the Hearing Panel's findings, on the balance of probabilities and by reference to the evidence presented or submissions made, as to whether the Alleged Offender engaged in Prohibited Conduct; and
 - ii. if the Hearing Panel makes a finding that the Alleged Offender engaged in Prohibited Conduct, what, if any, penalties it considers appropriate.
- j. Subject only to the rights of appeal under Clause 5.3, the Hearing Panel's decision shall be the full, final and complete disposition of the allegations of Prohibited Conduct by the Alleged Offender and will be binding on all parties.
- k. If the Alleged Offender or their representative does not appear at the hearing, after proper notice of the hearing has been provided, the Hearing Panel may proceed with the hearing in their absence.

6.3 APPEALS

- a. The Alleged Offender, the Sport and/or the Member Organisations have a right to appeal the decision of the Hearing Panel.
- b. The available grounds of appeal are:
 - i. where the decision of the Hearing Panel is wrong having regard to the application of this Policy or the Code of Conduct;
 - ii. where new evidence has become available;
 - iii. where natural justice has been denied; or
 - iv. in respect of the penalty imposed.
- c. A notice of appeal must be made in writing, lodged with the Board, through the Sport's Chief Executive Officer, within fourteen business days of the Hearing Panel's decision. The notice of appeal must specify the grounds for the appeal.
- d. Where the Board receives a notice of appeal, the Board must convene an appeal tribunal for the purposes of hearing the appeal ("the Appeal Tribunal"). Any hearing of the appeal must be held within thirty days of the notice of appeal being received by the Board.
- e. Any decision of the Hearing Panel that is appealed to the Appeal Tribunal will remain in effect while under appeal unless the Board orders otherwise.
- f. The Appeal Tribunal must be appointed by the Board for such time and for such purposes as the Board thinks fit and must:
 - i. be comprised of three Persons independent of the Sport with appropriate skills and experience to hear the matter;
 - ii. include at least one person who has considerable previous experience in the legal aspects of a disciplinary/hearings tribunal and dispute resolution; and
 - iii. not include any members from the initial Hearing Panel.

It is important for the Appeal Tribunal to be independent and suitably skilled, to bring confidence in all Relevant Persons they will receive a fair hearing.

- g. The hearing before the Appeal Tribunal is not a rehearing of the matter, but a hearing of the issue under appeal only.
- h. The Appeal Tribunal may conduct the appeal as it sees fit. However, any party to the appeal can be represented at and make written and oral submissions to the Appeal Tribunal subject to the discretion of the Appeal Tribunal.

- i. The Appeal Tribunal may, in its discretion:
 - i. affirm the decision of the Hearing Panel and the penalty imposed;
 - ii. affirm the decision of the Hearing Panel but decide to impose an alternative penalty; or
 - iii. revoke the decision of the Hearing Panel and the penalty imposed.
- j. The decision of the Appeal Tribunal shall be a majority decision and must be recorded in writing. The Appeal Tribunal and be communicated to the Sport's Chief Executive Officer and appellant as soon as practicable.
- k. The decision of Appeal Tribunal shall be final, non-reviewable, non-appealable and enforceable. No claim, arbitration, lawsuit or litigation concerning the dispute shall be brought in any other court or tribunal. Note: This provision does not prevent any law enforcement agency taking action.

This clause is subject to any legal rights a Relevant Person may have, such as the ability to appeal a matter to a superior Court through applicable legislation or common law.

SANCTIONS

6.4 PENALTIES

- a. If a Relevant Person admits they engaged in Prohibited Conduct or there is a finding that a Relevant Person has engaged in conduct that is Prohibited Conduct under this Policy or the Code of Conduct, the Board, the Hearing Panel or the Appeal Tribunal, as the case may be, may order that the Relevant Person:
 - i. be fined;
 - ii. be suspended from participating in any Competition or Event connected with the Sport;
 - iii. be banned from participating in any Competition or Event connected with the Sport;
 - iv. be reprimanded for their involvement in the Prohibited Conduct;
 - v. lose accreditation to continue their involvement in the Sport;
 - vi. be ineligible, for life, from participating in any Competition or Event connected with the Sport or from any other involvement in the Sport;
 - vii. be counselled and/or required to complete a course of education related to responsible gambling and harm minimisation; or
 - viii. subject to the terms and conditions of any contract between the Sport and the Relevant Person, have that contract terminated.
- b. Notwithstanding the provisions of clause 7.1, the Board, the Hearing Panel or the Appeal Tribunal may impose any other such penalty as they consider appropriate in their discretion.
- c. In addition to the penalties set out above, the Board, the Hearing Panel or the Appeal Tribunal may impose any combination of these penalties in their absolute discretion taking account of the gravity of the Prohibited Conduct.
- d. Further, the Board, the Hearing Panel or the Appeal Tribunal may, depending on the circumstances of the Prohibited Conduct, suspend the imposition of a penalty in their absolute discretion.
- e. All fines received pursuant to this Policy must be remitted to the Sport for use by the Sport for the development of integrity programs or as otherwise deemed appropriate.

NAME OF SPORT
POLICY DOCUMENT

ILLICIT DRUGS POLICY TEMPLATE

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ILLICIT DRUGS POLICY

Outline the NSO's position on illicit drugs here, with the below wording setting the purpose of the Illicit Drugs Policy.

I. POLICY PURPOSE

- a. This Policy aims to provide guidelines on restrictions, and raise awareness about *Illicit Drug* use in our sport. The policy is implemented with the following four pillars to safeguard our sport from the dangers of *Illicit Drugs*:
 - i. **Health:** To protect the health and well-being of our *Athletes, Athlete Support Personnel, and other Persons who are involved with the promotion and participation of our sport.*
 - ii. **Educate:** To educate our *Athletes and Athlete Support Personnel and other Persons involved in our sport on the dangers of involvement with Illicit Drugs.*
 - iii. **Integrity:** To assist in safeguarding the integrity of our sport by minimising the risks that can stem from *Illicit Drug use such as; criminal influence and potential compromise of Athlete or Athlete Support Personnel and/or criminal charges, breach of anti-doping rules, damage to the reputation of the Person and the NSO, and a ban from sport.*
 - iv. **Rehabilitate:** To provide assistance to an Athlete or Athlete Support Personnel who is found to have an involvement with Illicit Drug use, so they may take advantage of programs to facilitate their rehabilitation.

2. POLICY STATEMENT AND OBJECTIVE

- a. This Policy is designed to operate alongside other policies including, but not limited to, the Supplements Policy, the Code of Conduct, Member Protection Policy, the Anti-Doping Policy, and the Medications Policy which has been adopted by NSO to ensure that NSO competitions are conducted upon the basis of fair play and natural levels of fitness and development.
- b. This Policy is introduced to protect Athletes, Athlete Support Personnel and other Persons involved with our sport, from using or being involved with substances that may negatively impact their health and reputation, and the reputation and integrity of our sport.
- c. NSO will not tolerate unlawful activity associated with Illicit Drugs. If NSO becomes aware of unlawful activity it will be reported to the police.

3. APPLICATION

- a. This Policy applies to the following *Persons*:

Outline those specific categories of people within the control of the NSO to whom the Policy will apply. The below list is intended as a guide, and any categories irrelevant to the NSO should be deleted.

- i. all NSO Contracted *Athletes*;

- ii. and *Athlete Support Personnel* (whether employees, contractors, volunteers or otherwise) dealing with those *NSO Contracted Athletes*;
 - iii. any other *Athlete* or *Athlete Support Personnel* as determined and notified by NSO; and
 - iv. any other *Person* identified by the NSO who has agreed to be bound by this Policy.
- b. Compliance with this Policy is a mandatory requirement for the continuation of funding and support for all *NSO Contracted Athletes* and *Athlete Support Personnel* dealing with those *NSO Contracted Athletes*, and is a condition of their participation and/or involvement in the sport.

4. DEFINITIONS

- a. **Athlete** includes any person who competes in sport.
- b. **Athlete Support Personnel** is as it is defined in the World Anti-Doping Code.
- c. **Drug** is a term of varied usage. In medicine, it refers to any substance with the potential to prevent or cure disease or enhance physical or mental welfare. In pharmacology, it means any chemical agent that alters the biochemical or physiological processes of tissues or organisms. (*United Nations Office on Drugs and Crime <https://www.unodc.org/unodc/en/illicit-drugs/definitions/>*)
- d. **Hearing Panel** is as described in Article 11 and Appendix A of this Policy.
- e. **NSO Contracted Athlete** is any *Athlete* who is receiving funding or support from NSO.
- f. **Illicit Drug** refers to the status of the Drug and includes those defined in Section 5 of this Policy.
- g. **Person** means any natural person, including *Athletes* and *Athlete Support Personnel*.
- h. **Possession** is as it is defined in the World Anti-Doping Code.
- i. **Sample** means any biological material collected for the purposes of this Policy, with the intent of undertaking analysis in accordance with the applicable NSO analysis policies and guidelines.
- j. **Testing** means any Sample collection undertaken by NSO or an authorised representative, for the purposes of this Policy, in accordance with NSO's applicable testing policies and procedures.
- k. **Trafficking** is as it is defined in the World Anti-Doping Code.

5. ILLICIT DRUGS

This will define those Drugs that your NSO wishes to prescribe as 'Illicit' and prohibited under this Policy. The definition below is intended as a guide. However, this definition is intended to keep up-to-date with those Drugs considered illegal under State, Territory, and Commonwealth criminal legislation. Previous iterations of an Illicit Drugs Policy have provided a list of Drugs deemed 'illicit' under the Policy. This approach can become out-of-date if not actively monitored and updated as new Drugs become available.

- a. The *Illicit Drugs* prohibited under this *Illicit Drugs* Policy are those *Drugs* considered illegal under legislation of the state or territory where a breach occurs, as well as those listed in Schedule 3 of the *Criminal Code Regulations 2002 (Cth)* as amended from time to time.
- b. If an *Illicit Drug* has been lawfully and properly prescribed by a medical practitioner for a legitimate therapeutic purpose and evidence can be provided to that effect, then the use or *Possession* of the *Illicit Drug* may be exempt from prosecution under this Policy.

6. ATHLETE AND ATHLETE SUPPORT PERSONNEL RESPONSIBILITY

- a. Strict Liability
 - i. *Athletes* are personally responsible for anything found in their system. Ignorance is no excuse. An *Athlete* should ensure they are personally satisfied that any advice they receive regarding the use of any substance (including a prescribed *Drug*) is accurate and up to date.
- b. An *Athlete* must:
 - i. be knowledgeable of and comply with all rules applicable to them under this Policy.
 - ii. be aware of and keep up to date with which *Illicit Drugs Athletes* are prohibited from using under this Policy;
 - iii. not use any *Illicit Drugs*;
 - iv. only use medications and other substances in accordance with directions from the doctor, manufacturer or pharmacist;
 - v. not supply any other *Person* with medications or other substances that may breach this Policy;
 - vi. use their influence on other *Athletes* to deter any involvement with, or use of *Illicit Drug*;
 - vii. submit to and co-operate with requests to provide *Samples* for the purposes of *Testing* in accordance with this Policy;
 - viii. proactively participate in all education programs promoted by NSO to deter the use of *Illicit Drugs*;
 - ix. comply with all reasonable requests by NSO to participate in educating the public about the dangers of *Illicit Drugs*;
 - x. act in a discreet and confidential manner in discharging their obligations under this Policy;
 - xi. comply with all reasonable requests by NSO to participate in education, rehabilitation and counselling where appropriate; and
 - xii. behave in a manner that is consistent with the spirit and intent of this Policy.
- c. *Athlete Support Personnel* and other *Persons* must:
 - i. be knowledgeable of and comply with all rules applicable to them and the *Athletes* whom they support under this Policy;
 - ii. not use any *Illicit Drugs*;
 - iii. comply with all reasonable requests by NSO to complete education, counselling, or rehabilitation where appropriate;
 - iv. only use medications and other substances in accordance with directions from the doctor, manufacturer or pharmacist;
 - v. not supply any other *Person* with medications or other substances that may breach this Policy;
 - vi. be aware of and keep up to date with which *Illicit Drugs* are prohibited under this Policy;
 - vii. use their influence on *Athletes* and other *Athlete Support Personnel* and other *Persons*, to deter any involvement with or use of *Illicit Drugs* and assist them in understanding the harm associated with using or being associated with *Illicit Drugs*;
 - viii. act in a discreet and confidential manner in discharging their obligations under this Policy; and
 - ix. Behave in a manner that is consistent with the spirit and intent of this Policy.

7. NSO RESPONSIBILITY

- a. NSO must:
 - i. adopt, implement and comply with this Policy;
 - ii. ensure that all policies, rules, programs and suchlike that are provided for use by NSO members are consistent with this Policy;
 - iii. develop and implement appropriate education and prevention programs and initiatives to deter the use of *Illicit Drugs* and to provide education about the harms associated with using *Illicit Drugs*;
 - iv. use its best efforts to assist all those to whom this Policy applies to fulfil their responsibilities under this Policy; and
 - v. ensure its employees and contractors act in a discreet and confidential manner in discharging their obligations under this Policy.

8. EDUCATION AND SUPPORT PROGRAM

- a. Education Program
 - i. NSO will either use existing programs such as the Department of Health's Illicit Drugs in Sport (IDiS) online education program, or will develop and implement appropriate education and prevention programs and initiatives designed to promote the key messages of this Policy, and to provide guidance to those Persons who have breached. The programs will be delivered to target groups through appropriate mediums.
 - ii. The key messages to be promoted include:
 - A. Illicit Drug use is harmful;
 - B. Illicit Drug use can have a negative impact on your sporting performance;
 - C. Illicit Drug use can harm your reputation and sporting career;
 - D. Illicit Drug use can damage the reputation of your sports team;
 - E. Illicit Drug use can impact on the community who support you; and
 - F. Participating in sport supports a healthy lifestyle.
 - iii. NSO will incorporate relevant additional information relating to this Policy into the education programs.
 - iv. NSO will provide information about, and referrals to, counselling and support programs in relation to *Illicit Drugs* in the education programs. These programs may be face to face, an on-line service, or a telephone service.
- b. Referral to Support Program
 - i. NSO must provide access to support in the form of education, medical or counselling services (whether provided directly by NSO or by a referral), for *Athletes* or *Athlete Support Personnel*, or any other *Person* bound by this Policy who either breach this Policy, or request assistance.
 - ii. NSO may refer a *Person* for *Testing*, education, counselling or treatment, or may target test a *Person* where there are reasonable grounds for doing so.
 - iii. A *Person* may refer themselves or another *Person* bound by this Policy to NSO for *Testing*, education, counselling or treatment at any time. NSO has the discretion to refrain from recording a breach of this Policy against a *Person* who self refers.

9. ILLICIT DRUGS POLICY OFFICER

The IDPO is a nominated position within your organisation. The NSO may choose to appoint someone within the organisation, or seek someone outside the organisation to provide an independent perspective. Depending on the size of the NSO, the IDPO may be a full-time position, or incorporated with another position's duties e.g. the nominated integrity officer of the organisation.

- a. NSO shall nominate a suitable person to administer this Policy, and they shall be referred to as the Illicit Drugs Policy Officer (*IDPO*).
- b. The IDPO shall:
 - i. be responsible for the supervision and administration of this Policy and the associated education programs;
 - ii. be responsible for making this Policy (and any updates from time to time) available to all of those Persons who are bound by this Policy;
 - iii. be responsible for collecting, recording, and maintaining any results or information regarding *Testing* or analysis of *Samples* in relation to this Policy;
 - iv. determine or approve an appropriate management plan, which may include education, counselling, medical or other treatment, and anything else considered reasonably necessary for a *Person* bound by this policy;
 - v. monitor, supervise, or vary a management plan at any time as they deem reasonably appropriate;
 - vi. determine the financial support, if any, that a *Person* will be granted in relation to their undertaking a management plan;
 - vii. act in a professional, discreet and confidential manner in undertaking the obligations of their role under this Policy;
 - viii. have responsibility for decisions made on behalf of NSO in relation to this Policy, unless another person or body (such as the NSO CEO) is explicitly specified within this Policy as having that responsibility; and
 - ix. ensure they fully understand their role and obligations under this Policy, and have a current and accurate understanding of matters relevant to this Policy.

10. BREACHES

- a. A *Person* commits a breach of this Policy when any of the following occurs:
 - i. an *Illicit Drug* or its metabolites or markers is detected in a *Sample* taken from the *Person*;
 - ii. they refuse or unreasonably fail to comply with a reasonable direction of the NSO made under this Policy (including a request to provide a *Sample* for the purposes of *Testing*);
 - iii. they are in *Possession of an Illicit Drug*;
 - iv. they use an *Illicit Drug*;
 - v. They are *Trafficking an Illicit Drug*;
 - vi. where any *Person* has engaged in conduct and/or demonstrated an attitude contrary to the objectives, spirit and implementation of this Policy; or
 - vii. when any *Person* does or fails to do anything that is reasonably deemed by the IDPO to be a breach of this Policy.
- b. Breaches determined to fall under the NSO Anti-Doping Policy, NSO Member Protection Policy, NSO Medications Policy, NSO Supplements Policy or the NSO Code of Conduct will be dealt with in accordance with those Policies respectively.

- c. Notification of alleged Breach by IDPO
 - i. A *Person* who allegedly commits a breach of this Policy will be advised of the alleged Breach in writing as soon as reasonably practicable by the IDPO. The notice of the alleged breach will contain details of the alleged breach such that the *Person* may consider whether to dispute or accept the breach.
 - ii. A dispute must be provided to the IDPO within 48 hours of receiving the notice of alleged breach. If no dispute is lodged within this timeframe, the *Person* will be assumed to have accepted the Breach. If the *Person* disputes the alleged breach the matter will be heard by the *Hearing Panel*.
- d. A *Person* is entitled to dispute the breach in accordance with this Policy.
- e. Notification of alleged Breach Committed by a Minor
 - i. A *Person* who commits an alleged breach of this Policy who is a minor (under the age of 18 years) will be notified via their nominated representative, as identified to the NSO on the most recent membership and/or team nomination or competition entry form.
 - ii. The minor *Person* may include their nominated representative in subsequent interviews and communications with NSO relating to that particular alleged breach.
- f. Failure to Comply with IDPO Instruction a Further Breach
 - i. A *Person* who unreasonably fails to attend the *Hearing Panel*, or meet with the IDPO or any other person specified by the IDPO (such as the NSO CEO), education, or treatment, on any occasion when required to do so in accordance with a reasonable direction by the IDPO or as contained in a management plan, shall be deemed to have committed a further breach.

II. DISPUTING A BREACH

- a. Any *Person* who lodges a dispute bears the onus of proving, on the balance of probabilities, that the alleged breach finding should be disregarded. For the avoidance of doubt, any *Person* who disputes a breach finding in accordance with this Policy acknowledges that the details relating to the alleged breach will not be subject to the confidentiality requirements of this Policy.

This Hearing Panel process is designed to mirror the process outlined in the National Integrity of Sport Unit's Anti-Match-Fixing Policy Template, and is used as a guide. If your NSO already has an integrity tribunal or another mechanism in place, this may be used. However, the procedures and process set out in this document are the minimum standard that should be followed to ensure fairness.

- b. *Hearing Panel*
 - i. If a *Person* disputes the alleged breach as notified by the IDPO and elects to have their matter heard by the *Hearing Panel*, then the *Hearing Panel* shall hear and determine the matter in accordance with the *Hearing Panel* Procedure contained in Appendix A provided that:
 - the *Person* should be entitled to have their own legal representation for any hearing of the *Hearing Panel*;
 - the *Person* may be referred to the *Hearing Panel* for a hearing in respect of either one or both of the finding of guilt of a breach, and the matter of sanction;
 - where the *Person* is found by the *Hearing Panel* to have committed a breach, the *Hearing Panel* shall impose a sanction in accordance with Section 12; and
 - the *Hearing Panel* may take into consideration exceptional and compelling circumstances which would make it harsh and unreasonable to apply a usual sanction in all the circumstances of the case.

- c. The NSO may make a public announcement regarding any *Hearing Panel* hearing to be conducted under this Policy, or the sanction imposed by the *Hearing Panel*, unless there are extenuating circumstances which would make it unreasonable to do so, having regard to the objectives of this Policy, and the circumstances of the case.
- d. Appealing a *Hearing Panel* Finding
 - i. A *Person* or NSO (Appellant) may lodge an appeal with the *Hearing Panel* in respect of a determination under this Policy by the *Hearing Panel* from an initial hearing, by no later than close of business on the seventh day following notification of the decision of the *Hearing Panel* on one or more of the following grounds only;
 - an error in the application of this Policy;
 - the decision was so unreasonable that no *Hearing Panel* acting reasonably could have come to that decision having regard to the evidence before it; or
 - the sanction imposed was manifestly excessive in all of the circumstances of the case.
- e. The procedural matters set out in Appendix A shall apply to any appeal to the *Hearing Panel*.
- f. The Appellant shall have no further right of appeal other than as expressly provided in this Policy.

12. SANCTIONS

- a. Any *Person* (including an employees, volunteers or contractors) who is found to have breached this Policy may face disciplinary action by NSO.

Depending on the severity of the Breach, the NSO Hearing Panel may impose any of the following sanctions to ensure the appropriate punishment for a Breach of this Policy is imposed.

- b. The NSO *Hearing Panel* may recommend sanctions including the following:
 - i. a warning (generally accompanied by the completion of education);
 - ii. suspension from competition for a specified period;
 - iii. suspension from access to *Athletes* for a specified period;
 - iv. banning from participation in NSO-related competition, training or events;
 - v. suspension from NSO-organised training; and/or
 - vi. suspension or termination of Contract or financial support.

13. REPORTING AND PROVISION OF INFORMATION

- a. The IDPO shall provide the NSO CEO and Board regular reports of breaches of this Policy. Information regarding breaches will also be provided to the relevant club/s.
- b. CEOs and board members shall be obliged to treat the information received as confidential and shall not disclose the information without the approval of the IDPO, or the consent of the relevant *Person* to whom the confidential information relates.
- c. For clarity, if the *Person* is a member of another sport/s, then the IDPO, with approval of the NSO CEO, may notify the IDPO and/or NSO CEO of that other sport/s if considered appropriate and reasonable by the NSO CEO.
- d. Where there is a potential connection to a possible anti-doping rule violation (or other breach of the NSO Anti-Doping Policy), the IDPO may be obliged to notify other parties including the Australian Sports Anti-Doping Authority (ASADA), in accordance with the NSO Anti-Doping Policy.

- e. This Policy imposes obligations on the IDPO to disclose personal and confidential information to third parties in relation to Persons subject to this Policy, as well as others including without limitation those involved in education, counselling and treatment of persons subject to this Policy. Each *Person* subject to this Policy consents to the provision of such information in accordance with, and as anticipated by this Policy as a condition of their membership of NSO.
- f. The NSO may make a public announcement regarding any sanction imposed by the IDPO or NSO CEO regarding a breach of this Policy, unless there are extenuating circumstances which would make it unreasonable to do so, having regard to the objectives of this Policy, and the circumstances of the case.

14. INVESTIGATIONS

- a. As per Article 6A of the NSO Anti-Doping Policy, where information relevant to a possible anti-doping rule violation is known, the information must be passed on to the Australian Sports Anti-Doping Authority (ASADA). Deliberate failure to do so may in itself constitute a breach of the NSO Anti-Doping Policy.
- b. ASADA and/or NSO may decide to investigate a possible or suspected anti-doping rule violation. If ASADA or NSO has reason to believe a *Person* may have relevant information, then an interview or information may be requested with that *Person*. In accordance with Article 6A of the Anti-Doping Policy, the *Person* agrees to co-operate with any such request.
- c. Breaches of this Policy relating to illegal substances or activity should be reported to the police, which can be done anonymously via Crime Stoppers at <https://www.crimestoppers.com.au/> or by telephone on 1800 333 000

15. CONFIDENTIALITY AND PRIVACY

- a. Anyone who acquires information under this Policy must not disclose this information to any person unless this Policy expressly authorises the disclosure.
- b. There is no entitlement that an *Athlete* or *Athlete Support Personnel's* information and details breach will be kept confidential (once a final decision has been made with appeal rights waived or exhausted).
- c. This Policy imposes obligations on various authorised groups and bodies to disclose information in relation to an *Athlete* or *Athlete Support Personnel* subject to this policy to third parties involved in the administration of this Policy. Each *Athlete* or *Athlete Support Personnel* consents to the disclosure of information by these parties in accordance with this Policy.
- d. If an *Athlete* or *Athlete Support Personnel* publicly discloses to the public any circumstances relating to a breach of this Policy, the NSO and any relevant club or association will be entitled to receive information regarding that breach. In the case of such disclosure by an *Athlete* or *Athlete Support Personnel*, the obligations of confidentiality imposed pursuant to this section 14 shall no longer apply.
- e. If you wish to access your personal information held by NSO, or if you have any queries or complaints regarding your personal information, please contact the Privacy Officer on ##@#### or by telephone on #####. The NSO Privacy Policy can be accessed at #####

16. LINKS

- *Criminal Code Regulations 2002 (Cth)* <https://www.legislation.gov.au/Details/F2016C00109>
- Australian Government's Illicit Drugs in Sport Program: <http://www.idis.gov.au>
- National Integrity of Sport Unit - Contact: nisu@health.gov.au

17. CHANGES TO THIS POLICY

- a. NSO reserves the right to vary or replace this Policy at any time. Changes are effective upon posting the amended Policy on NSO's website. It is the responsibility of all Persons to remain informed of any amendments or updates to this Policy. Printed copies of this Policy may not be up to date, and so it is recommended that the current version of the Policy be accessed via NSO's website.

APPENDIX A – HEARING PANEL PROCEDURE

COMMENCEMENT OF PROCEEDINGS

- a. The *Hearing Panel* must comprise three persons independent of the Sport and with appropriate skills and experience appointed by the Board for such time and for such purposes as the Board thinks fit. The Board will appoint one of the members of the *Hearing Panel* to act as its Secretary.

The independence and skill set of Hearings Panel members is important in giving the process credibility and reducing the risk of appeals. However, where resources are limited, this may be a difficult and time-consuming process to source three independent persons. For a smaller resource sport, it may be beneficial to appoint at least one independent person to the Hearing Panel, and two persons from within your sport that are at arms-length from the individual case.

PROCEDURE OF THE HEARING PANEL

- a. This section applies if the *Person* contests the allegation(s) that he or she has is in Breach of the Policy as specified in the Notice, and there is a hearing of the allegations by the *Hearing Panel*.
- b. The purpose of the hearing shall be to determine whether the *Person* is in Breach of the Policy as specified in the Notice and, if the *Hearing Panel* considers that the *Person* is in Breach of this Policy, for the imposition any Sanction in the *Hearing Panel's* discretion.
- c. The *Hearing Panel* may conduct the hearing as it sees fit and, in particular, shall not be bound by the rules of evidence or unnecessary formality. The *Hearing Panel* must determine matters in accordance with the principles of procedural fairness, such as a hearing appropriate to the circumstances; lack of bias; inquiry into matters in dispute; and evidence to support a decision.
- d. The hearing shall be inquisitorial in nature and the *Hearing Panel* may call such evidence as it thinks fit in its discretion and all Relevant Persons subject to this Policy must, if requested to do so by the *Hearing Panel*, provide such evidence as they are able.

This allows the Hearing Panel to be actively involved in the hearing (i.e. asking questions of the Alleged Offender and the Sport).

- e. The hearing must be conducted with as much expedition as a proper consideration of the matters permit. However, the *Hearing Panel* may adjourn the proceedings for such reasonable time as it considers it necessary.
- f. Notwithstanding the above, the *Person* disputing the alleged Breach:
 - i. is permitted to be represented at the hearing (at their own expense);
 - ii. may call and question witnesses;
 - iii. has the right to address the *Hearing Panel* to make their case; and
 - iv. is permitted to provide written submissions for consideration by the *Hearing Panel* (instead of or as well as appearing in person). If the *Person* provides any written submissions, the *Hearing Panel* must consider those submissions in its deliberations.
- g. The hearing shall be closed to the public. Only persons with a legitimate interest in the hearing will be permitted to attend. This will be at the sole discretion of the *Hearing Panel*.
- h. The *Hearing Panel* must determine whether the *Person* is in Breach of this Policy on the balance of probabilities.
- i. The decision of the *Hearing Panel* shall be a majority decision and must be recorded in writing. The decision must, at a minimum, set out and explain:
 - i. the *Hearing Panel's* findings, on the balance of probabilities and by reference to the evidence presented or submissions made, as to whether the *Person* is in Breach of this Policy; and

- ii. if the *Hearing Panel* makes a finding that the *Person* is in Breach of this Policy, what, if any, Sanctions it considers appropriate.
- j. Subject only to the rights of appeal, the *Hearing Panel's* decision shall be the full, final and complete disposition of the allegations of Breach by the *Person* and will be binding on all parties.
- k. If the *Person* or their representative does not appear at the hearing, after proper notice of the hearing has been provided, the *Hearing Panel* may proceed with the hearing in their absence.

APPEALS

- a. The *Person*, the NSO and/or the Member Organisations have a right to appeal the decision of the *Hearing Panel*.
- b. The available grounds of appeal are:
 - i. where the decision of the *Hearing Panel* is wrong having regard to the application of this Policy or the Code of Conduct;
 - ii. where new evidence has become available;
 - iii. where natural justice has been denied; or
 - iv. in respect of the Sanction imposed.
- c. A notice of appeal must be made in writing, lodged with the Board, through the NSO's Chief Executive Officer, within fourteen business days of the *Hearing Panel's* decision. The notice of appeal must specify the grounds for the appeal.
- d. Where the Board receives a notice of appeal, the Board must convene an appeal tribunal for the purposes of hearing the appeal ("the Appeal Tribunal"). Any hearing of the appeal must be held within thirty days of the notice of appeal being received by the Board.
- e. Any decision of the *Hearing Panel* that is appealed to the Appeal Tribunal will remain in effect while under appeal unless the Board orders otherwise.
- f. The Appeal Tribunal must be appointed by the Board for such time and for such purposes as the Board thinks fit and must:
 - i. be comprised of three Persons independent of the Sport with appropriate skills and experience to hear the matter;
 - ii. include at least one person who has considerable previous experience in the legal aspects of a disciplinary/hearings tribunal and dispute resolution; and
 - iii. not include any members from the initial *Hearing Panel*.

It is important for the Appeal Tribunal to be independent and suitably skilled, to bring confidence in all Relevant Persons they will receive a fair hearing.

- g. The hearing before the Appeal Tribunal is not a rehearing of the matter, but a hearing of the issue under appeal only.
 - h. The Appeal Tribunal may conduct the appeal as it sees fit. However, any party to the appeal can be represented at and make written and oral submissions to the Appeal Tribunal subject to the discretion of the Appeal Tribunal.
 - i. The Appeal Tribunal may, in its discretion:
 - i. affirm the decision of the *Hearing Panel* and the Sanction imposed;
 - ii. affirm the decision of the *Hearing Panel* but decide to impose an alternative Sanction; or
 - iii. revoke the decision of the *Hearing Panel* and the Sanction imposed.
 - j. The decision of the Appeal Tribunal shall be a majority decision and must be recorded in writing. The Appeal Tribunal and be communicated to the Sport's Chief Executive Officer and appellant as soon as practicable.

- k. The decision of Appeal Tribunal shall be final, non-reviewable, non-appealable and enforceable. No claim, arbitration, lawsuit or litigation concerning the dispute shall be brought in any other court or tribunal. Note: This provision does not prevent any law enforcement agency taking action.

This clause is subject to any legal rights a Relevant Person may have, such as the ability to appeal a matter to a superior Court through applicable legislation or common law.

FACTORS RELEVANT FOR SANCTION

In determining the appropriate sanction, the NSO *Hearing Panel* shall identify all relevant aggravating and mitigating factors and determine the appropriate period of Ineligibility or if the *Person's* Contract or membership shall be terminated. Aggravating and mitigating factors include consideration of the following, but is not limited to:

- the presence and time of any acknowledgement of culpability by the *Person*;
- the behaviour record and/or character of the *Person*;
- the age and experience of the *Person*;
- the period of time remaining on the *Person's* Contract or membership;
- the *Person's* public profile and potential or actual damage his or her breaches have or may have had on their own reputation, the game or stakeholders in the sport;
- the possible welfare implications of the sanction if imposed on the *Person*;
- The importance of scheduled competitions or training potentially missed by the *Person* due to the imposed period of the sanction; and

Any other aggravating and/or mitigating factors put forward by the *Person*, NSO or another person.

ATTACHMENT

2

COALITION OF MAJOR
PROFESSIONAL AND
PARTICIPATION SPORT – SPORTS
INTEGRITY MECHANISMS

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OVERVIEW OF THE COALITION OF MAJOR PROFESSIONAL AND PARTICIPATION SPORTS INTEGRITY CAPABILITY

The Coalition of Major Professional and Participation Sports (COMPPS) provided information regarding the existing integrity capability of its members as part of the consultation process. Overall, all COMPPS sports have some form of integrity unit or members of staff tasked with overseeing the handling of integrity issues.

However, there are differences in the approach adopted by each NSO in relation to which issues it considers to fall within the scope of its integrity unit or officers. While some overlap exists in the issues dealt with by COMPPS as a group (doping, anti-corruption/match-fixing/gambling) there are issues such as player payments and salary cap issues which are included within the issues dealt with by some sports (AFL, ARU) but not included by others (FFA). Also, due to the difference in the financial positions of each sport, the number of staff and the split between full-time and part time staff devoted to dealing with integrity issues varies as well.

The table below summarises some of the information provided by COMPPS sports in the submission.

	Staff	Issues	Powers
Australian Football League (AFL)	<ul style="list-style-type: none"> • 15 full-time staff • 4 consultants (medical) • 9 casual employees (safety officers) 	<p>The key issues managed by the AFL Integrity Unit are:</p> <ul style="list-style-type: none"> • gambling • anti-doping • illicit drug policy • security of all AFL venues and premises • total player payments (salary cap) • enforcing the AFL rules • player behaviour and improper association • the registration process for all AFL players and club staff. 	<p>The powers of the AFL Integrity Unit include:</p> <ul style="list-style-type: none"> • to inquire into, investigate and deal with any matter in connection with the AFL or the AFL Rules and Regulations or appoint any other person to do so • to require and obtain production and take possession of all documents, records, articles or things in the possession or control of a Person that are relevant to any inquiry or investigation • to require access to the premises occupied by or in control of a Club, or examine any article or thing situated thereon, for the purpose of any inquiry or investigation or in respect of monitoring compliance with the AFL Rules and Regulations • to impose any sanction on any Person contravening the AFL Rules and Regulations on any terms or conditions seen fit or to otherwise deal with such matter in any manner they in their absolute discretion think fit • to refer any matter concerning an alleged breach of the AFL Rules and Regulations for hearing and determination, in whole or in part, by the Tribunal or other body or person appointed by the Commission • to determine all questions arising or objections made in relation to a Match or the AFL Competition • to stand down any Person subject to an inquiry or investigation from participating in or in connection with the AFL Competition • to exercise any other powers conferred by the AFL Rules and Regulations; or to delegate any of their powers under the AFL Rules and Regulations.

	Staff	Issues	Powers
Rugby Australia (RA)	<ul style="list-style-type: none"> • 6 staff • Uses third-party investigative and forensic experts 	<p>The dedicated Integrity Unit is designed to protect Australian Rugby from threats of doping, match-fixing, medical practices, athlete and staff poor behaviour and the other activities that may undermine the integrity of its competitions and the game of Rugby. The unit is responsible for overseeing:</p> <ul style="list-style-type: none"> • ARU's anti-corruption and betting program • ARU's anti-doping and illicit substance programs • ARU's medical and supplement use practices • player and staff conduct and discipline issues • member protection matters. 	<p>The RA Integrity Unit has powers to:</p> <ul style="list-style-type: none"> • investigate breaches of RA (and World Rugby) policies and codes • compel registered participants to appear for interview, produce documents and attend hearings • make recommendations to the Chief Executive Officer • make policy recommendations to the RA Board's Audit & Risk Committee and implement approved policy.
Cricket Australia (CA)	<ul style="list-style-type: none"> • 4 full-time members • Unit supported by CA Anti-Doping Medical Officer on part-time basis • Unit contracts anti-corruption officers and investigators as needed 	<p>The dedicated Integrity Unit is designed to protect Australian cricket from threats of doping, match-fixing and other activities that may undermine the integrity of its competitions and the game of cricket. The Unit is responsible for overseeing:</p> <ul style="list-style-type: none"> • CA's anti-corruption program • CA's anti-doping and illicit substance programs • player conduct issues • salary cap and player contracting issues. <p>The unit also oversees all disciplinary protocols for domestic cricket and is centrally involved in delivering education programs for all cricketers playing in CA competitions.</p>	<p>The Unit has powers to:</p> <ul style="list-style-type: none"> • investigate breaches of the CA Codes • compel participants (including players and officials) to appear for interview and produce documents • refer matters to Code of Conduct Commissioners • empanel tribunals as applicable under the CA Codes.

Staff	Issues	Powers
<p>Football Federation of Australia (FFA)</p> <ul style="list-style-type: none"> • 7 staff 	<p>The FFA Integrity Unit generally deals with matters that unfairly affect the outcome of, or the event in, a football match in Australia or involving an Australian team. It will consider such integrity issues insofar as they may relate to the National Teams, Hyundai A-League, Westfield FFA Cup, Foxtel Youth-League, Westfield W-League, the National Premier Leagues and state/grassroots competitions administered by or under the auspices of a Member Federation.</p> <p>In addition to the work undertaken by the FFA Integrity Unit, FFA's General Counsel – Regulatory and Integrity actively manages day-to-day integrity matters with the support of FFA's Senior Management Team, including the Head of Legal and Business Affairs. This work includes:</p> <ul style="list-style-type: none"> • investigating integrity matters • running disciplinary processes under the FFA National Code of Conduct • liaising with key external stakeholders such as state and territory Member Federations, law enforcement, government integrity units and Australian Sports Anti-Doping Authority (ASADA) • reviewing and identifying opportunities for enhancing FFA's integrity framework through educational and formal disciplinary mechanisms. 	<p>The current scope of the FFA Integrity Unit in the context of:</p> <ul style="list-style-type: none"> • betting and match fixing, includes: <ul style="list-style-type: none"> » reviewing and/or implementing guidelines, policies and regulations relating to betting and match fixing » discussing (and developing where appropriate) FFA's position regarding matters or issues of consideration for COMPPS or the National Sports Integrity Network, including legislative and policy reform » reviewing and considering the relevance and appropriateness of any international or national reports, policies or guidelines relating to betting and match fixing, such as the National Policy on Match-Fixing in Sport » considering any conduct or behaviour intended to unfairly affect the outcome of, or the event in, a football match in Australia or involving an Australian team » general integrity matters relating to product fee and integrity agreements with sports betting companies, including approved bet types and the provision of betting information covered by such agreements » the development and administration of educational tools and programs in respect of betting and match fixing. • anti-doping, includes: <ul style="list-style-type: none"> » drafting, reviewing and/or implementing guidelines, policies and regulations relating to anti-doping (including the World Anti-Doping Authority, the FFA Anti-Doping Policy and the FFA Sports Supplements Guidelines). » discussing (and developing where appropriate) FFA's position regarding matters or issues of consideration for the COMPPS or the National Sports Integrity Network, including legislative and policy reform » reviewing and considering the relevance and appropriateness of any international or national reports, policies or guidelines relating to anti-doping;

Staff	Issues	Powers
<p>Netball Australia</p> <ul style="list-style-type: none"> Part of the duties for CEO and Head of High Performance 	<p>The Netball Australia Integrity Unit:</p> <ul style="list-style-type: none"> monitors and evaluates frameworks, policies and rules ensures that internal controls related to frameworks, polices, and rules are effective communicates with the Netball Australia Board regarding frameworks, polices and rules Under delegation from the Netball Australia Board, appoints experts to investigate potential breaches of the Integrity in Netball Framework, polices and rules compels registered participants (including Players and Club Officials) to appear for interview and produce documents makes recommendations to the Chief Executive Officer and or the Netball Australia Board. 	<ul style="list-style-type: none"> monitoring or administering (as the case may be) relevant anti-doping tribunal hearings (including before FFA Anti-Doping Tribunal or the Court of Arbitration for Sport); as required, overseeing communications with relevant bodies and authorities in relation to anti-doping matters such as medical advisers, WADA and the ASADA; and the development and administration of educational tools and programs in respect of anti-doping.
		<p>Netball Australia does not have internal investigative capability and will engage necessary technical expertise as and when required.</p> <p>The Netball Australia Integrity unit, under Netball Australia Board Delegation, shall have the power to conduct investigations, in whatever manner it thinks fit, into the activities of any Person suspected to have committed an Offence under the Integrity in Netball Framework and associated Rules.</p> <p>The Netball Australia Board or Nominated Delegate can inquire into, investigate and deal with any matter in connection with the Integrity in Netball Framework and associated Rules.</p> <ul style="list-style-type: none"> Require and obtain production and take possession of all documents, records, articles or things in the possession or control of a Person that are relevant to any inquiry or investigation in connection with the Integrity in Netball Framework and associated Rules. Require access to the premises occupied by or in control of an Authorised Netball Provider for the purpose of any inquiry or investigation in connection with the Integrity in Netball Framework and associated Rules. Stand down any Person subject to an inquiry or investigation in connection with the Integrity in Netball Framework and associated Rules from participating in or in connection with netball. The Person is required to furnish formation within seven business days of making such demand, or within such other time as may be set by the Nominated Delegate.

	Staff	Issues	Powers
<p>National Rugby League (NRL)</p>	<ul style="list-style-type: none"> • 12 staff 	<p>The NRL Integrity & Compliance Unit is tasked with investigating and assessing breaches of the NRL Rules. It is also responsible for integrity policy development and delivery, and the management of the NRL Salary Cap. Areas currently overseen by NRL Integrity include the:</p> <ul style="list-style-type: none"> • NRL Code of Conduct, which sets behavioural standards and prohibits specified conduct such as betting on rugby league, the provision of inside information and involvement in match-fixing • NRL Anti-Doping Rules, which set out the Game’s WADA-compliant anti-doping code and testing regime • NRL Anti-Vilification Code, which prohibits vilifying conduct by Game Participants • NRL Appeals Committee Procedural Rules, which establishes the Game’s appeals body, and for which the General Manager Integrity acts as Secretary • NRL Playing Contract & Remuneration Rules, which establishes the NRL’s Salary Cap and the rules concerning NRL Playing Contracts • NRL Testing Policy (Illicit & Hazardous Drugs), under which NRL Integrity conducts the Game’s testing regime for illicit and misused drugs. 	<ul style="list-style-type: none"> • The NRL Rules grant the NRL Integrity & Compliance Unit wide powers of investigation into suspected breaches of the NRL Rules, including to compel registered participants (including Players and Club Officials) to attend interviews, answer questions and produce documents relevant to an investigation.

Staff	Issues	Powers
<p>Tennis Australia (TA)</p> <ul style="list-style-type: none"> • 5 staff 	<p>Integrity issues managed by the Tennis Australia Integrity and Compliance Unit include:</p> <ul style="list-style-type: none"> • Investigations and breaches of all TA national policies including but not limited to Anti-Doping Policy, Member Protection Policy, Privacy Policy, Code of Behaviour Tournaments and Competitions, Disciplinary Policy, Whistleblower Policy and Social Media • reviewing, developing and improving Tennis Australia's current education programs available for players, coaches, clubs, volunteers, officials and parents • implementation of the Tennis Australia Child Safeguarding principles and procedures • managing the operational aspects of the TA product fee and integrity agreements with licensed Australian bookmakers, ensuring mandatory reporting of all suspicious betting alerts • improving information and data sharing between, the Tennis Australia Integrity and Compliance Unit, law-enforcement agencies and the other international governing bodies of tennis • liaison and assistance to the Tennis Integrity Unit • fostering closer relationships with other major sporting codes • protect the integrity of the sport – governance matters 	<ul style="list-style-type: none"> • Investigation and prosecution of breaches of National Policies • Administration of all national disciplinary tribunals • Implement sanctions within the national policy framework.

